

**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

David J. Smith  
Clerk of Court

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February 14, 2020

**MEMORANDUM TO COUNSEL OR PARTIES**

Appeal Number: 17-13145-AA

Case Style: David Boysen v. Illinois Tool Works Inc., et al

District Court Docket No: 1:15-cv-01900-TWT

**This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause.**

The enclosed order has been ENTERED.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: T. L. Searcy, AA

Phone #: (404) 335-6180

MOT-2 Notice of Court Action

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 17-13145-AA

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DAVID L. BOYSEN,

Plaintiff - Appellant  
Cross Appellee,

versus

ILLINOIS TOOL WORKS INC. SEPARATION PAY PLAN,  
ILLINOIS TOOL WORKS, INC.,

Defendants - Appellees  
Cross Appellants.

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Appeal from the United States District Court  
for the Northern District of Georgia

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Before: JORDAN and TJOFLAT, Circuit Judges, and HUCK,\* District Judge.

BY THE COURT:

Before the Court is Appellant's "Motion and Memorandum in Support of Appellant's Application for Attorneys' Fees."

The motion is TRANSFERRED to the district court for its consideration of whether Appellant is entitled to attorney's fees and the amount of attorney's fees to which Appellant is entitled, if any.

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\* Honorable Paul C. Huck, United States District Judge for the Southern District of Florida, sitting by designation.

**CASE NO. 17-13145**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

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**DAVID L. BOYSEN,**  
*Plaintiff/Appellant,*

**v.**

**ILLINOIS TOOL WORKS INC. SEPARATION PAY PLAN  
AND ILLINOIS TOOL WORKS, INC.,**  
*Defendants/Appellees.*

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**A DIRECT APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA**

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**MOTION AND MEMORANDUM IN SUPPORT OF APPELLANT'S  
APPLICATION FOR ATTORNEYS' FEES**

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**R. Lawrence Ashe, Jr.,  
Georgia Bar No. 024500  
Paul R. Barsness  
Georgia Bar No. 597107  
Julie A. Wood  
Georgia Bar No. 023749  
PARKER, HUDSON, RAINER & DOBBS LLP  
303 Peachtree Street, NE  
Suite 3600  
Atlanta, Georgia 30308  
Tel: 404-523-5300 Fax: 678-533-7766**

*Attorneys for Appellant/Cross-Appellee David L. Boysen*

**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE  
DISCLOSURE STATEMENT**

There are no changes from the Certificate of Interested Persons and Corporate  
Disclosure Statement filed on July 25, 2017.



### **PROCEDURAL AND FACTUAL HISTORY**

After Appellant David L. Boysen ("Boysen") was terminated by Appellee Illinois Tool Works, Inc. ("ITW") in 2014, he filed a claim for separation pay under the Appellee Illinois Tool Works Inc. Separation Plan (the "Plan"). The Plan Administrator denied Boysen's claim and his subsequent appeal, stating that the "sole basis" for the denial of benefits was his determination that ITW had not eliminated Boysen's position (General Manager I)—a prerequisite for benefits. The Plan Administrator refused to consider, or provide to Boysen, documents and information relating to the issue of job elimination during the claim and appeal process. He likewise refused to consider any documents submitted by Boysen regarding his excellent job performance record, because the sole reason for denial was the fact that Boysen's position was not eliminated.

Boysen filed the underlying action, challenging the Plan Administrator's failure to provide him a "full and fair review" in violation of ERISA and the Plan's terms. Before the district court, Boysen again asked for information and documents relating to his termination. ITW and the Plan again refused, forcing Boysen to seek relief from the district court. The district court ordered ITW and the Plan to produce certain documents and information. When Boysen discovered that key documents still had not been produced, he sought further relief from the district court, which the district court denied. Thereafter, the district court granted ITW's and the Plan's motion for summary

judgment. Boysen appealed.

On April 3, 2019, this Court vacated the district court's grant of summary judgment. This Court stated the "plan administrator did not engage in a full and fair review of [Boysen's] claim." Opinion, pp. 2-3. This Court determined that the Plan Administrator "repeatedly refused to consider highly relevant evidence," thus breaching his fiduciary obligations to Boysen and violating ERISA *Id.* at 25. This Court remanded the case for further proceedings with the district court, possibly including a further remand all the way back to the Plan Administrator.

### **LEGAL ARGUMENT**

As this Court determined that the Plan Administrator failed to provide Boysen with his right (under ERISA and the Plan) to a full and fair review, Boysen is *eligible* to recover his fees under 29 U.S.C. § 1132(g)(1). He has achieved "some degree of success on the merits" of his claim. *See Hardt v. Reliance Standard Life Ins. Co.*, 560 U.S. 242, 245 (2010). Further, a fee award is *appropriate* under the five-factor test set forth in *Hardt*. Finally, this Court may determine the amount of an award of reasonable fees and expenses at this stage of the proceedings. As the local rules require Boysen to file a declaration attesting to the truthfulness of the amount of fees and expenses (along with contemporaneous time records), this Court has the necessary information and documentation to determine the reasonableness of the amount of fees and expenses. Boysen requests that this Court award him a total of \$318,961.50 for

fees and \$2,001.82 in expenses incurred in pursuing his claim in the administrative process, litigating his claim in the district court, and on appeal. The requested award is comparable to the fees expended by ITW in the district court proceeding to evade payment of Boysen's severance pay claim. *See* Appendix 1584-1630 (ITW's and the Plan's Itemized Fees in District Court).

**A. This Court Should Determine Boysen's Eligibility for Fees.**

ERISA provides that "[i]n any action under this subchapter . . . by a participant, beneficiary, or fiduciary, the court in its discretion may allow a reasonable attorney's fee and costs of action to either party." 29 U.S.C. § 1132(g)(1). 11th Cir. R. 39-2 allows Boysen to file an application for fees within 14 days after a petition for rehearing is denied. Upon a reversal on appeal, 11th Cir. R. 39-2 gives Boysen the option of seeking fees from this Court or from the district court upon remand.

This Court is best-positioned to make the decision regarding Boysen's eligibility to recover fees under 29 U.S.C. § 1132(g)(1), because Boysen's eligibility is predicated on this Court's opinion. Recently, the First Circuit Court of Appeals made the initial fee eligibility determination in a similar ERISA "full and fair review" case. *See Gross v. Sun Life Assurance Co. of Canada*, 763 F.3d 73 (1st Cir. 2014).

In *Gross*, the district court entered judgment in favor of the plan administrator, and the plaintiff appealed. The First Circuit found the "administrative record was 'inadequate to allow a full and fair assessment of Gross's entitlement to disability

benefits,' and therefore remanded the case to allow further development of the evidence." *Id.* at 76. The plaintiff then filed a motion for fees and costs with the appellate court pursuant to 29 U.S.C. § 1132(g)(1) seeking fees and costs she incurred both in the district court and on appeal. *Id.* The Court in *Gross* decided the eligibility for fees and costs issue was ripe for decision, and the plaintiff did not need to wait until remand to determine if she would ultimately obtain the benefits sought. The Court stated: "Our judgment in this appeal is final, and the outcome of the supplemental proceedings ordered by our remand will not change [the plaintiff's] eligibility for fees *for the phase of the case that concluded with that judgment*. We therefore consider the fees issue fit for adjudication." *Id.* at 81 (emphasis added).

In reasoning the eligibility of fees issue should be resolved by the appellate court instead of delayed for determination once the plaintiff's benefits claim is decided, the Court considered the onerous economic burdens on the ERISA participant and the difficulty of such participants securing and retaining counsel as cases move forward. *Id.* at 81-82. The same reasoning applies to Boysen in pursuing his ERISA claim. Boysen was terminated by ITW in 2014, *over five years ago*. It has taken Boysen *five years* of diligent and substantial legal efforts to obtain relief that will require ITW and the Plan to provide and evaluate the relevant information and documents concerning whether his job was eliminated. The possibility of further remand to the Plan Administrator raises the prospect that Boysen will largely have to

start the process all over again. Except for a \$10,000 retainer, Boysen's counsel has worked on a contingency fee basis for these *five years* in which ITW and the Plan have refused to provide and consider information and documents required by ERISA and the Plan's terms. *See* Declaration of R. Lawrence Ashe, Jr. ¶ 2 (attached hereto as Exhibit A). To ensure Boysen may continue to retain counsel for the remand to the district court, and potentially back to the Plan Administrator, this Court should make the initial fee eligibility determination.

**B. Boysen is Eligible for the Recovery of Fees and Expenses.**

ERISA gives this Court the discretion to "allow a reasonable attorney's fee and costs of action" to either party in a benefits proceeding. *See* 29 U.S.C. § 1132(g)(1). For a party to a benefits proceeding to be eligible for an award, the party need not be the "prevailing" party; instead, the party seeking the recovery of fees and costs must show "some degree of success on the merits." *Hardt*, 560 U.S. at 245. This "success" must be more than "trivial success" or a "purely procedural victory." *Id.* at 255. A claimant meets the "some degree of success" requirement "if the court can fairly call the outcome of the litigation some success on the merits without conducting a lengthy inquiry into the question whether a particular party's success was substantial or occurred on a central issue." *Id.*

The First Circuit Court of Appeals, interpreting *Hardt*, held that "some degree of success on the merits" is a "merits outcome that produces *some meaningful benefit*

*for the fee-seeker."* *Gross*, 763 F.3d at 76-77 (emphasis added). In *Gross*, the Court recognized that most of the courts interpreting *Hardt* have held that "remand to the plan administrator for review of a claimant's entitlement of benefits, even without guidance favoring an award of benefits or an actual grant of benefits, is sufficient success on the merits to establish eligibility for fees under section 1132(g)(1)." *Id.* at 77. For many claimants, a remand is often the "best outcome" one can "reasonably hope to achieve from the courts." *Id.*

Notably, even the dissent in *Gross* would support Boysen's eligibility for benefits. Relying on authority from a minority of jurisdictions holding that a purely procedural victory is insufficient to establish entitlement to fees, Judge Selya in dissent acknowledged that his decision would have been different had there been a determination that the claimant was denied a full and fair review. *See id.* at 87 and n.11.

Two other sister circuits have held, in unpublished opinions, that remanding for a full and fair review constitutes the requisite "some success on the merits" under *Hardt*. In *McKay v. Reliance Standard Life Ins. Co.*, 428 Fed. Appx. 537, 547 (6th Cir. 2011), the Court held that, though the plaintiff ultimately did not receive benefits, the remand constituted some success on the merits, because he received another review of his claim. The court reasoned getting "another shot" was some degree of success. *Id.* at 547. Similarly, in *Huss v. IBM Med. & Dental Plan*, 418 Fed. Appx.

498, 512 (7th Cir. 2011), the Court found the plaintiff had achieved some success on the merits where the court reversed the administrative denial of benefits and remanded for further proceedings.

While this Court has not addressed the issue, the district court in *Olds v. Ret. Plan of Intern. Paper Co.*, 2011 WL 2160264, No. 09-0192-WS-N (S.D. Ala. June 1, 2011) evaluated a plan's decision to deny benefits and concluded the plan had ignored relevant documents in making its denial determination. The district court remanded to the plan to conduct a "full and fair review." The claimant then filed a motion for fees with the district court. The court found the claimant had:

experienced 'some degree of success on the merits' when he presents a claim that the defendant violated his rights and the court rules that the defendant did violate those rights. That is precisely what occurred here: among other arguments, the plaintiff claimed that the Plan violated his statutory right to a full and fair review, and the Court held that the Plan did indeed violate that right.

*Olds*, 2011 WL 2160264, \*2.

By obtaining this Court's order, Boysen clearly has met the "some degree of success" standard in *Hardt*. This Court found that, "the plan administrator repeatedly refused to consider highly relevant evidence, or evidence which contradicted (or potentially conflicted with) his decision." Opinion, pp. 25-26. And that the "plan administrator did not engage in a full and fair review of [Boysen's] claim." *Id.*, pp. 1-2. This Court ruled that "plan administrators, constrained as they are by certain

fiduciary obligations, cannot refuse to consider key relevant information, or to investigate further when faced with potentially conflicting evidence, or deny access to information that is potentially beneficial to a claimant." *Id.*, p. 27.

Boysen presented a claim that ITW and the Plan violated his right to a full and fair review. This Court ruled that ITW and the Plan did violate that right. By filing his ERISA action and continuing to pursue such action on appeal, Boysen has achieved what he sought to achieve from the beginning: access to information and documents relating to the potential elimination of his position and an order that the Plan Administrator evaluate such information. This Court's decision is a clear success for Boysen. As Boysen has obtained "some degree of success on the merits", this Court should find Boysen *eligible* for an award of fees and costs under ERISA.

An eligibility determination is particularly important in a case like this. ITW and the Plan were willing to stonewall Boysen's claim and not provide a full and fair review, perhaps knowing that—as occurred in this case—a claimant cannot prevail if relevant information is excluded from the administrative record. Denying Boysen his fees and expenses would send a chilling signal. No reasonable law firm would accept an ERISA “full and fair review” case knowing that it would have to waste hundreds of thousands of potentially nonrecoverable dollars just to get access to the relevant information and start over.



**C. An Award of Fees is Appropriate under the Five-Factor Test.**

Upon determining that Boysen is *eligible* for fees under ERISA for achieving some degree of success on the merits his benefits claim, this Court may consider the five-factor test set forth in *Hardt* to determine if an award of fees would be *appropriate*. These five factors are:

- (1) the degree of opposing parties' culpability or bad faith;
- (2) ability of opposing parties to satisfy an award of attorneys' fees;
- (3) whether an award of attorneys' fees against the opposing parties would deter other persons acting under similar circumstances;
- (4) whether the parties requesting attorneys' fees sought to benefit all participants and beneficiaries of an ERISA plan or to resolve a significant legal question regarding ERISA itself; and
- (5) the relative merits of the parties' positions.

*Cross v. Quality Mgmt. Group, LLC*, 491 Fed. Appx. 53 (11th Cir. 2012) (citing *Hardt*).<sup>1</sup> “No one of these factors is necessarily decisive, and some may not be apropos in a given case, but together they are the nuclei of concerns that a court should address in applying Section 502(g).” *Iron Workers Local No. 272 v. Bowen*, 624 F.2d 1255, 1266 (5th Cir. 1980).

**1. ITW and the Plan Were Culpable for Refusing to Conduct a Full and Fair Review.**

The first factor this Court may consider in determining if a fee award is appropriate is the degree of ITW's and the Plan's culpability or bad faith in not

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<sup>1</sup> These "five factors also should guide appellate courts' determinations of whether to award fees on appeal." *Nachwalter v. Christie*, 805 F.2d 956, 962 (11th Cir. 1986).

providing Boysen with a full and fair review of his claim. Courts have consistently held a plan administrator's failure to provide a full and fair review is sufficient culpable conduct to support an award of fees. *See, e.g., Slupinski*, 554 F.3d at 48 (stating a plan administrator "may be found culpable if it failed to engage in a fair and open-minded consideration of the claim"); *Gross*, 763 F.3d at 83 (stating the plan's failure to make a "bona fide effort to determin[ation]" of whether the plaintiff was entitled to benefits evidenced sufficient culpability); *Olds*, 2011 WL 2160264, \*4 (holding a plan's carelessness in not conducting a full and fair review was culpable conduct supporting an award of fees).

This Court was even more critical of the review process here, describing it as so flawed that it "effectively made it impossible for Mr. Boysen to oppose the decision." *Id.*, p. 22. In conduct deemed "antithetical" to his fiduciary duty, the plan administrator "refuse[d] to seek documents that would be in the exclusive control of the company and then blame[d] Mr. Boysen for not producing sufficient evidence." *Id.*, p. 27. Then he "compounded" these problems, which alone justified reversal, by further refusing to consider the evidence that Boysen did submit and "dig deeper." *Id.*

Importantly, this Court need not find ITW and the Plan acted in bad faith – a finding of some degree of culpability for not providing a full and fair review in and of itself weighs in favor of finding that a fee award for Boysen would be appropriate. *See Wright v. Hanna Steel Corp.*, 270 F.3d 1336, 1345 (11th Cir. 2001) (noting the court

should consider *either bad faith or culpability of the party*, and district court did not abuse its discretion in deciding party's carelessness demonstrated sufficient culpability); *see also Slupinski v. Unum Life Ins. Co.*, 554 F.3d 38, 48 (2d Cir. 2009) (stating that "bad faith" and "culpability" are each "distinct standards"). That said, the Plan Administrator was not merely careless. His stubborn and repeated refusal to consider highly relevant information, in the face of multiple direct requests, is evidence of bad faith. As this Court explicitly held ITW and the Plan failed to provide a full and fair review of Boysen's claim, the culpability factor clearly weighs in favor of finding that a fee award is appropriate.

**2. ITW and the Plan Are Able to Satisfy An Award of Fees.**

This factor regarding a party's ability to satisfy an award of fees is of "little weight." *Gross*, 763 F.3d at 84. However, given that ITW and the Plan are highly solvent and are unlikely to claim any financial hardship, the Court should place this factor on Boysen's "side of the scale." *Id.* Moreover, ITW and the Plan acknowledged they incurred fees in the amount of \$231,939.00 to defend against Boysen's benefits claim *prior* to the appeal being filed. *See* Appendix, p. 1584. Given ITW's 2018 revenue of \$14.8 billion, it is readily capable of paying the fees. 2018 Annual Report, p. 1, *available at* <https://investor.itw.com/annual-reports/Index?KeyGenPage=431137>.

**3. Awarding Fees Would Deter ITW and the Plan From Denying Other Claimants a Full and Fair Review.**

ITW and the Plan refused to provide Boysen with a full and fair review of his

claim. Notably, the total amount of separation pay sought by Boysen when he filed his claim was approximately \$45,000.00, 80% lower than the fees ITW and the Plan incurred and substantially lower than the fees Boysen incurred and now seeks to recover.<sup>2</sup> Awarding Boysen his fees and expenses at this time would deter ITW and the Plan from similarly mistreating other claimants in the future.

The Court in *Gross* agreed that awarding fees to a claimant would deter a plan from denying future claimants a full and fair review:

[P]lan administrators ordinarily will be in the best position to develop a record adequate for the full and fair review required by the statute, and courts should not hesitate to demand 'higher-than-marketplace quality standards' in the handling of claims. We therefore conclude that an award of fees to [the claimant] may have a desirable deterrent effect by demonstrating that excessive hostility to claims involving subjective symptoms is ill-advised.

*Gross*, 763 F.2d at 84-85; *see also Olds*, 2011 WL 2160264, \*4 (noting an award of fees "can only serve to make the Plan more attentive to its statutory obligation to actually consider claimants' claims and reduce the Plan's incentive to gloss over them"). Thus, the deterrence factor weighs heavily in favor of finding that a fee award to Boysen would be appropriate.

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<sup>2</sup> Notably, the fee award in an ERISA case is not required to be proportionate to any award of underlying damages. *See United Auto. Workers Local 529 v. Metro Auto Ctr.*, 501 F.3d 283 (3rd Cir. 2007) (agreeing with D.C., 6th and 9th Circuits that ERISA fee award need not be proportionate to underlying damage award).

**4. The Fourth Factor is Not Relevant to Boysen's Fee Application.**

Boysen concedes his claim does not seek to benefit all participants and beneficiaries of the Plan; however, this factor is not dispositive in this Court's determination of whether an award is appropriate. *Olds*, 2011 WL 2160264, \*5.

**5. Boysen's Success On the Merits in this Appeal Outweighs Any Success of ITW and the Plan.**

Contrary to Boysen's success on the merits, ITW and the Plan did not obtain any successful results from Boysen's appeal or their cross-appeal from the district court's denial of their request for fees. Thus, Boysen manifestly was more successful than ITW and the Plan; this factor weighs heavily in his favor. *See Olds*, 2011 WL 2160264, \*5 ("the relative merits, however, do not concern whether the plaintiff will ultimately receive benefits but whether the Plan violated the plaintiff's right to a full and fair review . . . . [and] [t]he disparity in those merits is stark.").

As all factors at issue weigh strongly in Boysen's favor, this Court should find that a fee award to Boysen is *appropriate* under the five-factor test.

**D. Boysen Is Entitled to Recover the Amount of Reasonable Fees Incurred.**

Pursuant to 11th Cir. R. 39-2, Boysen files this memorandum in support of his application for fees. Attached as Exhibit A is a Declaration of R. Lawrence Ashe, Jr. setting forth the summary of the work performed and the reasonableness of such work by Boysen's attorneys. Attached to Mr. Ashe's Declaration are contemporaneous time records (Exhibits 2-3), itemized summary of work performed by each attorney or

paralegal on the required form (Exhibits 4-5), and invoices of costs (Exhibit 6). As discussed below, the fees totaling \$318,961.50 and expenses totaling \$2,001.82 are reasonable and recoverable.

**1. Boysen Is Seeking Fees and Expenses Incurred to Date.**

Boysen is seeking fees and expenses for pre-litigation matters relating to his benefits claim, litigating his benefits claim in the district court, and pursuing this appeal, including the preparation of this application for fees. Boysen may recover all such reasonable fees and expenses. *See, e.g., Wright v. Hanna Steel Corp.*, 270 F.3d 1336, 1345 (11th Cir. 2001) (*pre-litigation fees* - recognizing no authority supporting a contention that an award of fees for pre-litigation was not authorized by ERISA and holding district court did not abuse its discretion in awarding pre-litigation fees); *Wright*, 270 F.3d at 1345 (*district court fees* – affirming award of fees incurred at the district court); *Nachwalter v. Christie*, 805 F.2d 956 , 961 (11th Cir. 1986) (*fees on appeal* – holding "subsection 1132(g)(1) allows the recovery of attorney's fees and costs incurred in an appeal."); *see also Gross*, 763 F.3d at 76, 86 (holding ERISA claimant was eligible for an award for fees and costs for litigation in the district court and on appeal).

Pre-litigation fees are particularly appropriate here. As this Court acknowledged, “[t]he parties’ pre-suit correspondence is central to our analysis, so we recount it in some detail.” Opinion, p. 5.

## **2. The Amount of Fees Sought is Reasonable.**

ERISA permits the recovery of a "reasonable attorney's fee and costs of action to either party." 29 U.S.C. § 1132(g)(1). "What constitutes a reasonable attorney's fee is calculated using the "lodestar" method, taking the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *See Alhassid v. Bank of America, N.A.*, 688 Fed. Appx. 753, 755 (11th Cir. 2017) . The "fee applicant bears the burden of establishing entitlement and documenting the appropriate hours and hourly rates." *Alhassid*, 688 Fed. Appx. at 755.

## **3. The Number of Hours Expended is Reasonable.**

The total hours worked by Boysen's attorneys and paralegals in this action through the district court level was 659.3 hours. As ITW and the Plan admitted in its request for fees from the district court that *over seven hundred hours* of legal work solely at the district court level was reasonable for their legal professionals, given the difficulty of the case, the subject matter involved, and the scope of discovery efforts and motion practice, *see* Appendix, pp. 1591-94, ITW and the Plan cannot credibly argue now that fewer hours expended by Boysen's legal professionals over an additional stage (pre-litigation) was not reasonable.

Boysen was required to confer with ITW and the Plan for months about his claim prior to filing the Complaint. After filing, ITW vigorously fought all discovery. Boysen was forced to file two motions to compel in an attempt to obtain documents

relating to the elimination of his job. Boysen was also required to respond to ITW and the Plan's motion for summary judgment on his ERISA claim, and to file an emergency motion in connection with such response in a final attempt to obtain crucial information and documents prior to the district court's ruling on the summary judgment motion. After the district court entered its order, the clerk erroneously awarded ITW fees without ITW even seeking them. This forced Boysen to move the district court to reconsider the judgment, to which ITW responded by seeking fees. Boysen spent many hours arguing against ITW and the Plan's retaliatory and frivolous motion for fees at the district court (which was denied, and such denial was affirmed by this Court). In sum, the time spent in pursuing Boysen's claim at the district court was reasonable and largely caused by ITW's and the Plan's stonewall intransigence.

On appeal, Boysen's attorneys and paralegals spent a total of 419.1 hours. These hours included preparing initial appeal forms, preparing a mediation statement and attending a court-ordered mediation, preparing an Appellant Brief, the Appendix, an Appellee Brief (as to ITW and the Plan's cross-appeal) and a Reply Brief, preparing for and providing oral argument, and preparing this application. Preparation of the fee application required legal professionals to review contemporaneous billing statements, prepare this legal memorandum, the Declaration of Mr. Ashe and the forms required by this Court showing the total amount of hours spent. Thus, the amount of time spent on the appeal, including the fee application, is reasonable.



#### 4. The Hourly Rates of the Professionals Are Reasonable.

"A reasonable hourly rate is the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skills, experience, and reputation." *Norman v. Housing Auth. of City of Montgomery*, 836 F.2d 1292, 1299 (11th Cir. 1988). The Court may take into account the subject matter of the litigation and may consider that ERISA is an extremely complex statute and the pursuit of Boysen's claim required the use of attorneys with ERISA expertise. *See Bowen v. SouthTrust Bank of Alabama*, 760 F. Supp. 889, 897 (M.D. Ala. 1991) (considering litigation concerned ERISA in determining whether rate was reasonable).

Notably, when ITW and the Plan sought their fees at the district level, ITW and the Plan set forth substantial arguments that its lead attorneys' rates of \$380 and \$360 were reasonable rates for a complex ERISA litigation. *See* Appendix, pp. 1594-97. In that same submission, ITW and the Plan cited many cases discussing the rates of lawyers working on ERISA cases which supported their reasonable rate argument.<sup>3</sup> *See, e.g., Trustees of Teamsters Pension Trust Fund of Philadelphia v. Sheinman Provision Co.*, 2012 WL 3104402 at \*1-2 (E.D. Pa. July 30, 2012) (recognizing \$300/hour was reasonable for associate specializing in labor and employment law); *Oster v. Standard Ins. Co.*, 768 F. Supp. 2d 1026, 1035 (N.D. Cal. 2011) (\$600/hour

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<sup>3</sup>To their fee request in the district court, ITW and the Plan attached a Declaration of Walter Christopher Arbery, an attorney in Atlanta, Georgia, who opined a rate of \$360-380 was reasonable in defending Boysen's claims. *See* Appendix, pp. 1628-30.

for ERISA specialists and \$400/hour for associates were reasonable).

The attorneys working for Boysen billed at a rate of \$190 to \$490 per hour, with all of the attorneys (except for Mr. Ashe) billing below the \$380 rate that ITW and the Plan represented as reasonable. This higher rate for Mr. Ashe is entirely justified given his over 50 years of experience in successfully litigating employment cases in Georgia and throughout the country and his national status as an attorney. All of these rates are reasonable for the Atlanta metropolitan market.

**5. The Lodestar Figure is Presumptively Reasonable.**

There is a strong presumption that the lodestar calculation method represents a reasonable fee. *See Blum v. Stenson*, 465 U.S. 886, 898 (1984); *Bivins v. Wrap It Up, Inc.*, 548 F.3d 1348, 1350 (11th Cir. 2008). As Boysen has presented evidence supporting the reasonableness of the rates for each professional and the amount of time spent by the professionals, the lodestar figure, the number of hours multiplied by the applicable rate, this Court should find the total amount of fees sought by Boysen is reasonable. This is especially true in this case as the fees sought by Boysen are comparable to the fees sought by ITW and the Plan when they filed their motion for fees with the district court.

**6. The Court Should Award Boysen His Reasonable Expenses.**

ERISA also provides this Court with discretion to award reasonable costs to either party. *See* 29 U.S.C. § 1132(g)(1). Here, Boysen requests the Court award a

total of \$2,001.82 in non-taxable expenses. Copies of invoices are attached to Mr. Ashe's Declaration as Exhibit 6. Expenses incurred for such costs are recoverable under ERISA. *See Plumbers*, 2013 WL 3816660 at \*6.

### **CONCLUSION**

As Boysen achieved some success on the merits of his claim, this Court should find that Boysen is *eligible* for an award of fees and costs. As the factors used by this Court to determine if it should award fees and costs in an ERISA action clearly weigh in Boysen's favor, this Court should find an award of fees and costs is *appropriate*. This Court should find Boysen is entitled to a fee award of \$318,961.50 and an award of costs of \$2,001.82 as Boysen has provided evidence that such amounts are reasonable.

Respectfully submitted, this 21st day of June, 2019.

**PARKER, HUDSON, RAINER & DOBBS LLP**

By: /s/ R. Lawrence Ashe, Jr.  
R. Lawrence Ashe, Jr.  
Georgia Bar No. 024500  
Paul R. Barsness  
Georgia Bar No. 597107  
Julie A. Wood  
Georgia Bar No. 023749  
303 Peachtree St. NE  
Suite 3600  
Atlanta, GA 30308  
Telephone: 404-523-5300  
Facsimile: 404-522-8409

*Counsel for Appellant/Cross Appellee*

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME  
LIMITATION, TYPEFACE REQUIREMENTS  
AND TYPE STYLE REQUIREMENTS**

This brief complies with the type-volume limitation of Fed. R. App. P. 27(d)(2) because the substance of the brief that was produced using a computer does not contain more than 5,200 words. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in proportionally spaced typeface using Microsoft Office Word 2010 in 14-point Times New Roman type.

By: /s/ R. Lawrence Ashe, Jr.  
R. Lawrence Ashe, Jr.  
Georgia Bar No. 024500

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day filed this **MOTION AND MEMORANDUM IN SUPPORT OF APPELLANT'S APPLICATION FOR ATTORNEYS' FEES** using the Court's CM/ECF system, which automatically sends notification to the parties and counsel of record. A copy of the foregoing **MOTION AND MEMORANDUM IN SUPPORT OF APPELLANT'S APPLICATION FOR ATTORNEYS' FEES** was also sent via U.S. Mail to Appellee's counsel as follows:

Wesley E. Stockard  
Shella B. Neba  
Littler Mendelson, P.C.  
3344 Peachtree Rd., N.E.  
Suite 1500  
Atlanta, Georgia 30326

Dated: June 21st, 2019

By: /s/ R. Lawrence Ashe, Jr.  
R. Lawrence Ashe, Jr.

# EXHIBIT A

**CASE NO. 17-13145**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

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**DAVID L. BOYSEN,**

*Plaintiff/Appellant,*

**v.**

**ILLINOIS TOOL WORKS INC. SEPARATION PAY PLAN**

**AND ILLINOIS TOOL WORKS, INC.,**

*Defendants/Appellees.*

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**A DIRECT APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA**

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**DECLARATION OF R. LAWRENCE ASHE, JR.**

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**DECLARATION OF R. LAWRENCE ASHE, JR.**

I, R. Lawrence Ashe, Jr. do hereby affirm:

1. I am over the age of 18 and am competent to give this Declaration. I make this declaration in support of Mr. Boysen's Motion for Attorney's Fees and Costs as required by 11th Cir. R. 39-2. All statements in this declaration are made based upon my personal knowledge and review of our itemized statements of attorney's fees in this case.

2. I am a Senior Counsel with the law firm of Parker, Hudson, Rainer & Dobbs, LLP ("Parker Hudson") and counsel of record for Mr. Boysen in the above-styled case. Except for a \$10,000.00 retainer, Parker Hudson has worked on a contingent fee basis for the five years that it has represented Mr. Boysen in his dispute and subsequent legal action against ITW and the Plan.

3. I am admitted to practice in the State of Georgia and the District of Columbia and before the United States Supreme Court, this Court and the United States Court of Appeals of the Second, Fourth, Fifth, Sixth, Ninth, Tenth and D.C. Circuits, and the Northern and Middle Districts of Georgia.

4. I obtained my undergraduate degree from Princeton University, *magna cum laude*, in 1962 and my law degree from Harvard Law School, *cum laude*, in 1967.



A copy of my professional resume is attached hereto and incorporated herein as Exhibit 1.

5. Since I began my career as a lawyer, my practice has largely been devoted to employment and civil rights litigation.

6. Paul Barsness is Of Counsel with Parker Hudson. Mr. Barsness was the primary attorney other than myself responsible for the work on this employment litigation matter. He presented the oral argument to this Court. Mr. Barsness received his undergraduate degree from the University of Georgia in 1998, and his law degree from Georgia State University, *summa cum laude*, in 2009. Mr. Barsness is admitted to practice in Georgia, as well as before this Court and the Northern and Middle Districts of Georgia. Mr. Barsness's practice has been largely devoted to employment law throughout his career at Parker Hudson, and he has regularly represented clients in a variety of ERISA-related litigation matters.

7. Besides Mr. Barsness, associates Tiffany R. Johnson and Katrina Hodges assisted with the fact investigation and discovery, legal research, analysis of issues, motion and brief drafting over the course of the litigation of this case at the district court.

8. Ms. Johnson is a former associate with Parker Hudson and is now an Assistant U.S. Attorney in the Northern District of Georgia. Ms. Johnson received her undergraduate degree from the Princeton University in 2009, and her law degree from

Wake Forest University School of Law in 2012. At the time Ms. Johnson worked on this action, she was admitted to practice in Georgia as well as the United States District Court for the Northern District of Georgia.

9. Ms. Hodges is a former associate with Parker Hudson and is now with the Office of the General Counsel for the United States Department of Health and Human Services. Ms. Hodges received her undergraduate degree from Boston University in 2007 and received a Master's degree from Kennesaw State University in 2009. She received her J.D. from Georgia State University College of Law in 2013, where she served as a student writing associate editor on the Georgia State University Law Review and in the Georgia State University Moot Court. At the time Ms. Hodges worked on this action, she was admitted to practice in Georgia as well as the United States District Court for the Northern District of Georgia.

10. Other legal professionals, including several attorneys and summer associates worked on Mr. Boysen's case at the district court level as shown by the copies of the contemporaneous time records for the legal work performed for Mr. Boysen's case at the district court attached hereto as Exhibit 1. However, as these attorneys and summer associates had limited involvement in the case and in an effort to seek only the recovery of fees that were clearly efficient and necessary, as well as reasonable, Mr. Boysen is not seeking the recovery of the fees for the work performed



by these individuals on Mr. Boysen's case at the district court. The amount of fees represented by the hours worked by these professionals equals \$25,965.00.

11. In addition to Mr. Barsness, Julie A. Wood, an associate, also assisted with the legal research, analysis of issues, and brief drafting over the course of the litigation of this case on appeal.

12. Julie A. Wood is a senior associate with Parker Hudson. Ms. Wood received her undergraduate degree, *summa cum laude*, from the University of Georgia in 1993, and her law degree from University of Oregon School of Law in 1996, *Order of the Coif*, where she served as Editor-in-Chief of the Oregon Law Review. After graduating from law school, Ms. Wood clerked for the Honorable James R. Browning at the United States Court of Appeals for the Ninth Circuit. Ms. Wood is admitted to practice in Georgia, as well as before this Court and the United States District Courts for the Northern and Middle Districts of Georgia. Ms. Wood's practice has been largely devoted to commercial litigation, including employment litigation, throughout her career at Parker Hudson. She has represented clients in a variety of ERISA-related litigation matters.

13. Other attorneys worked on Mr. Boysen's case on appeal, as shown by the copies of the contemporaneous time records for the legal work performed for Mr. Boysen's case on appeal attached hereto as Exhibit 2. However, as these attorneys had limited involvement in the case and in an effort to only seek the recovery of fees

that were efficient and necessary, as well as reasonable, Mr. Boysen is not seeking the recovery of the fees for the work performed by these individuals on Mr. Boysen's case on appeal. The amount of fees represented by the hours worked by these professionals on the appeal amounts to \$7,212.00. Thus, the amount of fees worked by legal professionals on the appeal and in the district court that Mr. Boysen *is not seeking* is \$33,086.00.

14. Two paralegals, Shay K. Burdette and Mark Cline, at Parker Hudson helped with Mr. Boysen's case during both while it was pending at the district court and on appeal. These paralegals provided discovery assistance and helped prepare the Appendix and this Application for Attorneys' fees.

15. The billing rates charged to Mr. Boysen for all attorneys and legal professionals representing Mr. Boysen in this litigation during the five years this action has been pending are reflected below. Because this dispute commenced in 2014 and has spanned over many years, the rates of several legal professionals identified above have increased during the pendency of this case.

R. Lawrence Ashe, Jr.	\$490-\$550
Paul Barsness	\$250-\$355
Julie A. Wood	\$325-\$365
Tiffany R. Johnson	\$210
Katrina Hodges	\$190

Mark Cline \$200-\$220

Shay K. Burdette \$190-\$245

16. As a lawyer practicing in Atlanta for more than 50 years and having held leadership positions in three Atlanta firms and the American Bar Association's Employment Law Committee, I am generally familiar with rates charged by other lawyers in this community with similar credentials, experience, education and training. The rates charged by Parker Hudson for the time expended on this case by the above legal professionals are reasonable as compared to those rates.

17. Attached to this Declaration as Exhibit 2 are copies of contemporaneous time records evidencing the time recorded by the legal professionals listed above for the work performed at the district court. The description of the time billed in this case contains the names of the legal professionals involved, the hours billed in tenths of an hour, a description of the service, and the charges for that particular service.

18. Attached to this Declaration as Exhibit 3 are contemporaneous time records evidencing the time recorded by the legal professionals listed above for the work performed on the appeal. The description of the time billed in this case contains the names of the legal professionals involved, the hours billed in tenths of an hour, a description of the service, and the charges for that particular service.

19. Attached to this Declaration as Exhibit 4 are forms summarizing the legal work performed by all legal professionals in this matter at the district court in the form



required by 11th Cir. R. 39-2. The total amount of hours spent working on this matter in the district court by the legal professionals was 659.3 hours. The total dollar amount of fees sought by Mr. Boysen for work performed at the district court is \$185,420.00.

20. Attached to this Declaration as Exhibit 5 are forms summarizing the legal work performed by all legal professionals in this matter on appeal in the form required by 11th Cir. R. 39-2. The total amount of hours spent working on this matter on appeal by the legal professionals was 419.10 hours. The total dollar amount of fees sought by Mr. Boysen for work performed on the appeal is \$133,541.50.

21. All of the time for which Parker Hudson has billed was recorded at the time the services were rendered and inputted into a computer program which maintains such records for our firm.

22. All of the time for which Parker Hudson billed was, in my professional judgment, reasonably necessary to provide effective representation to our client in this vigorously defended case.

23. As reflected on Exhibits 2-5, the attorney's fees presented in this Declaration cover the time period from inception of this matter through the filing of this application with this Court. The total amount of attorney's fees billed and incurred by Mr. Boysen for this time period and for which an award is sought is \$318,961.50. This amount—or the lodestar figure—was calculated simply by multiplying the applicable hourly rate of a legal professional by the amount of time such legal

professional spent on such task. These sums were then totaled to get a sum of \$185,420.00 for the work performed in the district court (Exhibits 2 and 4) and \$133,541.50 for work performed on appeal (Exhibits 3 and 5) for a total sum of \$318,961.50. (As set forth above, the sums listed on the contemporaneous time records for the district court and on the appellate court are higher than the sums sought herein because Mr. Boysen is not seeking an award for fees for certain timekeepers for the work performed at the district court and on appeal totaling \$33,086.00).

24. After reviewing the time records maintained by Parker Hudson in connection with this matter, and evaluating the efforts necessary to conduct this litigation, I believe that amount of \$318,961.50 to be reasonable, necessary and appropriate for award by this Court in a case that has been vigorously defended throughout, including an essentially frivolous retaliatory counterclaim.

25. I have also reviewed all of our firm's invoices for non-taxable expenses in this matter. Those invoices and a summary of those expenses for which Mr. Boysen seeks recovery (a total of \$2,001.82) is attached to this Declaration as Exhibit 6.

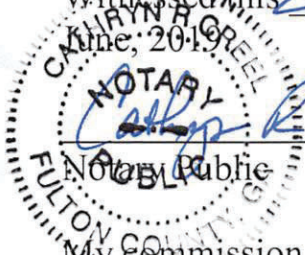
26. The services performed and the attorney's fees charged in this matter were necessary and reasonable, and in line with the attorney's fees customarily charged in the Atlanta metropolitan area for similar legal services by attorneys of similar credentials, experience, skill and reputation.

27. Based upon my professional experience, my practice as an attorney, and my familiarity with legal fees charged for ERISA litigation, I believe that the fees billed for the time spent and the litigation expenses are reasonable for the type of work performed in this case by the individuals who performed them.

28. Based upon my professional experience and my practice as an attorney, I certify my opinion that the work performed was reasonably necessary to the preparation, presentation and prosecution of this case.

29. The facts set forth in this declaration are correct to the best of my knowledge, information and belief.

I declare under the penalty of perjury under the laws of the United States, pursuant to 28 U.S.C. § 1746, that the foregoing is correct and based upon my knowledge, information, experience and belief, as well as my review of the aforementioned documents.

Witnessed this 21<sup>st</sup> day of  
June, 2019  
  
Kathryn R. Greel  
Notary Public  
My Commission expires:  
March 9, 2021

R. Lawrence Ashe, Jr.  
R. Lawrence Ashe, Jr.



# EXHIBIT 1



## r. lawrence ashe, jr.

Senior Counsel  
Atlanta

[lashe@phrd.com](mailto:lashe@phrd.com)

P: 404 420 4320

F: 404 522 8409

### practice area(s)

Employment Litigation & Counseling  
Executive Compensation & Separation Agreements

### admitted to practice

Georgia  
District of Columbia  
U.S. Supreme Court  
U.S. Courts of Appeals for Second, Fourth, Fifth, Sixth, Ninth, Tenth, Eleventh, and DC Circuits  
U.S. District Court for the Northern District of Georgia  
U.S. District Court for the Middle District of Georgia

### biography

Lawrence Ashe has successfully defended and tried more discrimination class actions to judgment than any other management lawyer in the country. Acclaimed by the *National Law Journal* as the “Dean of the Management Class Action Bar,” Lawrence represents clients throughout the country and has litigated some of the largest such cases tried to date. His courtroom skills, gravitas, and leadership combine to make him a powerful presence in all matters he undertakes.

With a practice focused on major Employment and Civil Rights litigation matters, Lawrence primarily represents defendants, but occasionally represents plaintiffs in individual cases not presenting issue conflicts. Most of these matters involve workplace discrimination, employment, and retaliation claims, both individual and class actions. A large portion of Lawrence’s practice is around employment testing and selection, including the successful defense of disparate impact claims to state teacher certification tests. Lawrence has also successfully mediated dozens of employment cases. He is regularly called on by clients for advice on employment law compliance.

Lawrence is dedicated to serving his clients. He thrives when handling their largest, most consequential matters. His diverse experience and mastery of his field allow him to lead even the most complex and impactful cases to a successful conclusion. Lawrence has held a wide variety of leadership roles in the Atlanta community, and has received numerous local, regional, and national accolades reflecting his judgment and effectiveness as a trial and appellate lawyer.

### experience

- For more than fifty years, 95% of Lawrence’s law practice has been devoted to jury and non-jury civil disputes and litigation, focusing on employment, labor, and civil rights matters. With regard to his national employment and discrimination law practice, approximately 80% has been defendant representation and 20% plaintiff representation. Employment testing issues now average being one-half of Lawrence’s practice. Lawrence has also successfully mediated over two dozen cases.
- Lead trial counsel in some of the largest class action employment and other discrimination cases actually tried to date, as well as numerous individual cases. Have tried to conclusion twelve major discrimination class actions, more than any other management lawyer in America. The highest profile defense was of California’s K-12 teacher licensing test (“CBEST”). The successful U.S. District Court defense was affirmed en banc by the Ninth Circuit, which held state teacher certification test subject to Title VII regulation, but, because it tested basic skills, sufficiently related to teaching to withstand disparate impact claims. *AMAE v. State of California, et al.* (9th Cir. 2000) (en banc).



- Served as co-lead counsel for a world renowned landscape architect in a post-settlement JAMS arbitration between the client and his former business partners, a Chinese architect and a French urban planning professional, all of whom previously operated a very successful multi-disciplinary commercial design firm in Shanghai, China. During a multi-day hearing before a London-based arbitrator the parties presented testimony from witnesses in Europe, China and the Philippines. Following the conclusion of the arbitration, the arbitrator entered a substantial award in favor of the firm's client, including broad injunctive relief and a seven figure monetary judgment. The award was confirmed over objection and the client prevailed in an appeal to the confirmation order.
- Defended suit by 19 plaintiffs claiming violation of constitutional and privacy rights. Addressed resolution compliance issues.
- National employment testing and validation counsel on all relevant matters for EEI (Edison Electric Institute) and its participating members in this national trade association for investor-owned electric utilities.

### thought leadership

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- Co-Presenter, "Legal Update," EEI 2018 Conference on Testing, New Orleans, Louisiana (June 2018).
- Webinar Co-Presenter, "Legal Implications of Testing on Job Applicants," Lorman Education Services (March 2018).
- Co-Editor, 1989 Five-Year Cumulative Supplement and drafter of original Scored Tests Chapter (BNA 1976) and all subsequent editions and supplements thereto (ABA), Lindemann, Grossman & Weirich Employment Discrimination Law (BNA 1983 - Present)
- Co-author of the *amicus curiae* brief filed with the U.S. Supreme Court by the Executive Committee of Division 14 of the American Psychological Association in *Washington v. Davis*, 423 U.S. 820 (1976)

### accolades

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- Recognized by *The Best Lawyers in America*® for Civil Rights Law (2013-2019) and Labor and Employment Law (2011-2019). Has been recognized by *The Best Lawyers in America*® since 1991.
- Listed as a Band 1 attorney in Chambers USA: America's Leading Lawyers for Business for Georgia Labor and Employment lawyers (2013-present)
- Civil Rights Milestone Honoree Award from the State Bar of Georgia and the Center for Civil and Human Rights "as one of the Georgia lawyers who worked for justice and equal treatment for all of Georgia's citizens." (June 3, 2015)
- One of 10 "Nation's Most Powerful Employment Attorneys - Hall of Fame" (2013)
- Named Atlanta 2012 "Litigation Labor and Employment Lawyer of the Year" by *Atlanta Best Lawyers*
- Recognized as one of Georgia's "Top 10" lawyers by *Georgia Trend* magazine (2010, 2011, 2012)
- Sole "Star Individual" in the 2010, 2011, and 2012 editions of *Chambers USA: America's Leading Lawyers for Business* for Georgia Labor and Employment lawyers
- Selected as one of "The 100 Most Powerful Employment Attorneys in America" (May 2009, 2011 and 2012) by *Lawdragon* and *Human Resources Executive Magazine*
- Gate City Bar Association Hall of Fame Award (2009)



- Named as a “Georgia Super Lawyer” by *Law & Politics* and *Atlanta Magazine* (2004 - 2019)

## professional affiliations

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- State Bar of Georgia
- District of Columbia Bar
- Gate City Bar Association
- Atlanta Bar Association
- American Bar Association
- American Employment Law Council, Founder and Executive Committee Member
- N.D. Ga. Member of the Committee on Lawyer Qualifications and Conduct, 11th Circuit Court of Appeals (2001 – present), Eleventh Circuit Chair (2018 to date)
- Master and Executive Committee, Bleckley Inn of Court, U.S. District Court, Northern District of Georgia (1990 – present)
- Anti-Defamation League’s first Judge Elbert Tuttle Distinguished Jurisprudence Award (1998)
- Court Disciplinary Committee, USDC, N.D. Ga. (1992-1996)
- Fellow, College of Labor and Employment Lawyers (1996 to date)
- Fellow, American College of Trial Lawyers (1994 to date)
- Board and Executive Committee member, Center for Civil and Human Rights (2008 - Present)
- Council Member of the Harvard Law School Association (1994-98, 1999 - Present), and Southeastern Regional Representative (1999 - Present)
- Honorary Consul to the State of Georgia for the Republic of Poland (March 2011 - Present)
- Board member, Piedmont Park Conservancy (2006 - Present)
- Chair, Ivan Allen Society, United Way of Metropolitan Atlanta (2006-2007), Campaign Cabinet (2008), and Leadership Giving Executive Committee (2009 to date)
- Board and Executive Committee member, ReGender (formerly National Council for Research on Women) (2007-2013)
- President (1977-1980) and Director (1974-81, 1982-97), Legacy Award (2012), Urban League of Greater Atlanta

## education

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- Harvard Law School (LL.B., *cum laude*, 1967)
- Princeton University (A.B., *magna cum laude*, 1962)

# EXHIBIT 2

**Parker, Hudson, Rainer & Dobbs LLP**

A LIMITED LIABILITY PARTNERSHIP

**ATTORNEYS AT LAW****303 PEACHTREE STREET, N.E.****SUITE 3600****ATLANTA, GA 30308****(404) 523-5300**

EIN: 58-1423485

David Boysen  
13411 Bradshaw Street  
Apt. 32104  
Overland Park, KS 66213

Invoice Date: 05/31/2019 RLA

**Prebill # 306236****Client # 005820****Matter # 00001****Invoice No.: 0**

ATTN:

**Re: Re: Employment Advice**  
**(005820/00001C)**

**FOR PROFESSIONAL SERVICES RENDERED THROUGH: May 31, 2019**

04/21/14	RLA	Review e-mail from client	0.20 hrs	490/hr	\$98.00	0
04/22/14	PRB	Confer with Mr. Boysen about ITW's response time, and confer with RLA	0.40 hrs	250/hr	\$100.00	0
04/24/14	RLA	E-mail exchange with D. Scruggs; telephone conference with M. Wexler re: D. Scruggs; review e-mail from D. Scruggs; e-mail exchange and telephone conference with D. Boysen	1.00 hrs	490/hr	\$490.00	0
06/02/14	RLA	Review e-mails from client	0.10 hrs	490/hr	\$49.00	0
06/04/14	PRB	Begin work drafting response letter to ITW	1.60 hrs	250/hr	\$400.00	0
06/05/14	RLA	Conference with PRB; review and edit PRB's draft letter to Mr. Scruggs; e-mail exchange with client	0.80 hrs	490/hr	\$392.00	0
06/05/14	PRB	Finish response letter; confer with RLA and revise and edit letter	1.50 hrs	250/hr	\$375.00	0
06/06/14	RLA	Review e-mails from client; review e-mails from ITW counsel Scruggs	0.60 hrs	490/hr	\$294.00	0
06/06/14	PRB	Supervise transmittal of response letter to ITW	0.40 hrs	250/hr	\$100.00	0
06/06/14	SKB	Update letter to ITW	0.20 hrs	190/hr	\$38.00	0
06/09/14	RLA	Review e-mail from client	0.00 hrs	490/hr	N/C	0
07/21/14	RLA	Conferences with PRB	0.30 hrs	490/hr	\$147.00	0
07/21/14	PRB	Research case law supporting fraud claims	0.70 hrs	250/hr	\$175.00	0

07/21/14	PRB	Call with opposing counsel to discuss potential settlement	0.50 hrs	250/hr	\$125.00	0
07/23/14	RLA	Conference with PRB	0.20 hrs	490/hr	\$98.00	0
07/23/14	PRB	Call with Mr. Boysen to discuss response to ITW; confer with RLA	0.80 hrs	250/hr	\$200.00	0
07/24/14	RLA	Review e-mail from PRB to client	0.10 hrs	490/hr	\$49.00	0
07/24/14	PRB	Draft correspondence to ITW outlining factual basis for allegations of job elimination	1.90 hrs	250/hr	\$475.00	0
07/25/14	RLA	Conference with PRB; review, edit and sign letter to Mr. Scriggs; review e-mail from PRB to client	0.40 hrs	490/hr	\$196.00	0
07/25/14	PRB	Confer with Mr. Boysen and RLA, and revise settlement response to ITW	0.80 hrs	250/hr	\$200.00	0
08/05/14	RLA	Review e-mail from J. Scruggs	0.20 hrs	490/hr	\$98.00	0
08/06/14	RLA	E-mail exchange with client; conference with PRB	0.40 hrs	490/hr	\$196.00	0
08/06/14	PRB	Review response from ITW	0.60 hrs	250/hr	\$150.00	0
08/07/14	RLA	Review e-mail from client; review e-mails from PRB	0.30 hrs	490/hr	\$147.00	0
08/08/14	RLA	Conference with PRB; review e-mail from PRB; telephone conference with D. Boysen and PRB; review e-mails from client; review, edit and send letter to ITW counsel	0.80 hrs	490/hr	\$392.00	0
08/08/14	PRB	Confer with RLA about response; draft response letter; confer with JDG about potential ERISA claims and process for satisfying exhaustion requirements	3.60 hrs	250/hr	\$900.00	0
08/11/14	RLA	Edit and file appeal re: benefits; conference with PRB; e-mail exchange with client	0.60 hrs	490/hr	\$294.00	0
08/11/14	PRB	Confer with JDG and draft letter appealing the denial of ERISA benefits	2.60 hrs	250/hr	\$650.00	0
09/12/14	RLA	Review e-mail from PRB	0.10 hrs	490/hr	\$49.00	0
09/12/14	RLA	Review e-mail from PRB	0.10 hrs	490/hr	\$49.00	0
09/12/14	PRB	Draft and send status update to Mr. Boysen	0.30 hrs	250/hr	\$75.00	0
09/15/14	RLA	E-mail exchange with client and PRB	0.20 hrs	490/hr	\$98.00	0
09/25/14	RLA	Review e-mail from J. Scruggs; review e-mail from client and PRB re: same	0.20 hrs	490/hr	\$98.00	0
09/26/14	RLA	Review e-mail from J. Scruggs; review e-mail from client; conference with PRB	0.40 hrs	490/hr	\$196.00	0
11/07/14	PRB	Confer with client about next steps	0.20 hrs	250/hr	\$50.00	0

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12/03/14	RLA	Review e-mail from E. Goldman for ITW; review e-mail from client	0.30 hrs	490/hr	\$147.00	0
12/08/14	RLA	Review e-mail from opposition; several conferences with PRB	0.30 hrs	490/hr	\$147.00	0
12/31/14	PRB	Confer with Mr. Boysen about next steps	0.10 hrs	250/hr	\$25.00	0
01/18/15	RLA	Review e-mail from client with attachments	0.20 hrs	490/hr	\$98.00	0
01/27/15	RLA	E-mail exchange with client	0.20 hrs	490/hr	\$98.00	0
01/28/15	RLA	Review e-mail from PRB	0.10 hrs	490/hr	\$49.00	0
01/28/15	PRB	Conferral with TRJ and RLA about representation; begin work drafting response to Mr. Goldman	1.40 hrs	250/hr	\$350.00	0
01/29/15	RLA	Review e-mail from PRB; e-mail PRB and D. Boysen	0.30 hrs	490/hr	\$147.00	0
01/29/15	PRB	Begin claims research for contingency memorandum; review case law regarding fraud claims and ERISA preemption	3.10 hrs	250/hr	\$775.00	0
01/29/15	PRB	Continue work drafting response to Plan Administrator regarding denial of benefits	2.10 hrs	250/hr	\$525.00	0
01/30/15	RLA	E-mail client and PRB	0.10 hrs	490/hr	\$49.00	0
01/30/15	PRB	Continue claims research; review case law regarding the standard of review in an ERISA denial-of-benefits case; begin review of case law interpreting the phrase "job elimination" as a criteria for benefits eligibility	4.40 hrs	250/hr	\$1,100.00	0
02/02/15	RLA	Conference with PRB; review and edit PRB's draft letter to ITW	0.40 hrs	490/hr	\$196.00	0
02/02/15	PRB	Revise correspondence to ITW regarding claims denial	0.40 hrs	250/hr	\$100.00	0
02/02/15	PRB	Continue claims analysis; outline key facts supporting entitlement to additional benefits	1.60 hrs	250/hr	\$400.00	0
02/03/15	PRB	Analyze potential damages	0.30 hrs	250/hr	\$75.00	0
02/04/15	PRB	Review communication about other GM terminated by Hammouri, begin work drafting memorandum for potential handling on contingency basis	1.30 hrs	250/hr	\$325.00	0
02/05/15	PRB	Research ERISA case law governing awards of attorneys fees and incorporate into contingency memorandum	3.10 hrs	250/hr	\$775.00	0
02/12/15	PRB	Confer with TRJ about ERISA claims	0.50 hrs	250/hr	\$125.00	0
02/12/15	TRJ	Review claims analysis; discuss same	0.80 hrs	210/hr	\$168.00	0
02/19/15	PRB	Revise response letter to ITW and confer with RLA	0.50 hrs	250/hr	\$125.00	0



02/23/15	RLA	Telephone conference and conference with PRB; review and edit PRB memo re: contingent fee; review e-mail from client; review e-mail from client to PRB	0.70 hrs	490/hr	\$343.00	0
02/23/15	PRB	Review client information and send description of deadlines and next steps; confer with RLA about claims analysis and response to ITW	1.10 hrs	250/hr	\$275.00	0
02/24/15	PRB	Revise claims analysis and send to RLA	0.80 hrs	250/hr	\$200.00	0
03/04/15	RLA	Letter to/from and telephone conference with client	0.30 hrs	490/hr	\$147.00	0
03/04/15	PRB	Attend contingency committee meeting to discuss potential representation	0.50 hrs	250/hr	\$125.00	0
03/20/15	RLA	Letter from PRB	0.10 hrs	490/hr	\$49.00	0
03/20/15	PRB	Confer with TRJ and RLA about next steps	0.30 hrs	250/hr	\$75.00	0
05/07/15	TRJ	Review file and discuss complaint	0.20 hrs	210/hr	\$42.00	0
05/19/15	RLA	Letter to PRB	0.10 hrs	490/hr	\$49.00	0
05/19/15	TRJ	Revise response letter to Elliot Goldman responding to ITW benefits decision letter	0.10 hrs	210/hr	\$21.00	0
05/19/15	TRJ	Draft revised engagement letter to client; discuss same with RLA	0.50 hrs	210/hr	\$105.00	0
05/20/15	PRB	Confer with TRJ about venue options and next steps for filing Complaint	1.60 hrs	250/hr	\$400.00	0
05/20/15	TRJ	Draft complaint	2.90 hrs	210/hr	\$609.00	0
05/20/15	TRJ	Research re proper venue and proper defendants	2.00 hrs	210/hr	\$420.00	0
05/20/15	TRJ	Email client re: revised engagement letter	0.10 hrs	210/hr	\$21.00	0
05/20/15	TRJ	Discuss strategy for draft complaint	0.20 hrs	210/hr	\$42.00	0
05/20/15	TRJ	Review and prepare correspondence for mailing	0.10 hrs	210/hr	\$21.00	0
05/20/15	TRJ	Review correspondence with ITW and ITW separation plan	1.00 hrs	210/hr	\$210.00	0
05/21/15	PRB	Review and revise draft complaint	0.90 hrs	250/hr	\$225.00	0
05/21/15	TRJ	Revise complaint	0.50 hrs	210/hr	\$105.00	0
05/21/15	TRJ	Discuss revisions to complaint	0.10 hrs	210/hr	\$21.00	0
05/21/15	TRJ	Draft complaint	0.70 hrs	210/hr	\$147.00	0
05/22/15	RLA	Review and edit TRJ draft complaint; letters to and letters from client; conference with PRB re: same; telephone conference with client PRB; revise and edit draft supplemental retainer letter to client; conference with PRB re: same	0.90 hrs	490/hr	\$441.00	0

		05/22/15	PRB	Revise engagement letter and send to Mr. Boysen; revise and distribute complaint	1.60 hrs	250/hr	\$400.00	0
		05/26/15	RLA	Letters from and letters to client; conference with PRB	0.40 hrs	490/hr	\$196.00	0
		05/26/15	PRB	Revise complaint; draft certificate of interested persons	1.50 hrs	250/hr	\$375.00	0
		05/27/15	RLA	Conference with PRB re: final complaint edits; proof complaint in final and direct its filing	0.60 hrs	490/hr	\$294.00	0
		05/27/15	PRB	Final revisions; supervise filings	1.00 hrs	250/hr	\$250.00	0
		05/28/15	RLA	Letters to and letter from client	0.20 hrs	490/hr	\$98.00	0
		06/11/15	PRB	Confer with TRJ about service issues	0.10 hrs	250/hr	\$25.00	0
		07/23/15	TRJ	Research and retain service of summons and complaint on defendants	0.30 hrs	210/hr	\$63.00	0
		07/30/15	TRJ	Email correspondence with process servers in Illinois re: affidavits of service	0.20 hrs	210/hr	\$42.00	0
		08/04/15	RLA	Letters from Grady Murdock, counsel for ITW; letter to PRB	0.30 hrs	490/hr	\$147.00	0
		08/05/15	RLA	Letter from and letter to Grady Murdock; telephone conference	0.40 hrs	490/hr	\$196.00	0
		08/05/15	PRB	Compile settlement information and confer with RLA	0.50 hrs	250/hr	\$125.00	0
		08/13/15	RLA	Consent order	0.10 hrs	490/hr	\$49.00	0
		08/14/15	RLA	Review and analysis of court order	0.20 hrs	490/hr	\$98.00	0
		08/17/15	RLA	Letter to and letter from ITW counsel	0.20 hrs	490/hr	\$98.00	0
		08/17/15	TRJ	Review email correspondence re: motion for extension	0.20 hrs	210/hr	\$42.00	0
		09/18/15	RLA	Letter from Grady Murdock	0.10 hrs	490/hr	\$49.00	0
		09/21/15	RLA	Letter from and letter to opposing counsel yesterday; review consent order; letter to client; letter from and letter to PRB	0.60 hrs	490/hr	\$294.00	0
L140	A103	09/22/15	ACAM	Review order granting second consent motion extending answer deadline and initiate event dates in Prolaw	0.20 hrs	180/hr	\$36.00	0
		10/02/15	RLA	Letter from, letter to and telephone conference with Wes Stockard; letter from Grady Murdock; letter to client and PRB	0.70 hrs	490/hr	\$343.00	0
		10/02/15	PRB	Analyze settlement offer and confer with Mr. Boysen and RLA	0.50 hrs	250/hr	\$125.00	0

		10/05/15	RLA	Review defendant's answer to plaintiff's complaint	0.40 hrs	490/hr	\$196.00	0
		10/05/15	PRB	Review Answer and Corporate Disclosure Statement and send to Mr. Boysen	0.60 hrs	250/hr	\$150.00	0
		10/06/15	JDG	Review of Complaint, Answer, and Separation Pay Plan; assess ERISA issues	1.00 hrs	350/hr	\$350.00	0
L140	A103	10/07/15	ACAM	Review Defendant's answer and certificate of interested persons and update event dates in Prolaw	0.20 hrs	180/hr	\$36.00	0
		10/08/15	JDG	Review of settlement offer and ERISA assertions; conference with RLA	0.20 hrs	350/hr	\$70.00	0
		10/08/15	RLA	Telephone conference with ITW counsel; letters to client	0.40 hrs	490/hr	\$196.00	0
		10/08/15	PRB	Review settlement offer and confer with RLA and TRJ	0.50 hrs	250/hr	\$125.00	0
		10/09/15	PRB	Confer with RLA about settlement demand	0.20 hrs	250/hr	\$50.00	0
		10/12/15	RLA	Review research memo by TRJ; letter to and telephone conference with Grady Murdock; conference with TRJ	0.70 hrs	490/hr	\$343.00	0
		10/12/15	TRJ	Research possible state law claims for retaliation and summarize same	1.30 hrs	210/hr	\$273.00	0
		10/13/15	RLA	Letter from Grady Murdock	0.10 hrs	490/hr	\$49.00	0
		10/14/15	RLA	Letter to and letter from client	0.20 hrs	490/hr	\$98.00	0
		10/14/15	PRB	Confer with Illinois counsel about claims	0.40 hrs	250/hr	\$100.00	0
		11/03/15	RLA	Letters from ITW counsel; work with TRJ on inserts	0.60 hrs	490/hr	\$294.00	0
		11/03/15	RLA	Letters from PRB re: appeal and denial appeal	0.20 hrs	490/hr	\$98.00	0
		11/03/15	RLA	Review PRB cases on entitlement to discovery	0.40 hrs	490/hr	\$196.00	0
		11/03/15	PRB	Confer with TRJ about 26(f) report; research grounds for jury trial; research grounds for discovery beyond administrative file	2.90 hrs	250/hr	\$725.00	0
		11/03/15	TRJ	Telephone conference with opposing counsel re: joint preliminary planning conference; discuss same	0.10 hrs	210/hr	\$21.00	0
		11/03/15	TRJ	Discuss issues raised in draft joint planning and discovery plan	0.20 hrs	210/hr	\$42.00	0
		11/03/15	TRJ	Telephone conference with opposing counsel re: settlement potential	0.30 hrs	210/hr	\$63.00	0
		11/03/15	TRJ	Draft Plaintiff's response to 26(f) report	1.40 hrs	210/hr	\$294.00	0
		11/04/15	RLA	Letter to and letter from ITW counsel; letter from and letter to TRJ re: draft court filing; telephone conference with ITW counsel re: settlement	0.40 hrs	490/hr	\$196.00	0

		11/04/15	TRJ	Telephone conferences with opposing counsel re: 26(f) report and potential settlement; discuss same	0.60 hrs	210/hr	\$126.00	0
		11/04/15	TRJ	Review and revise joint preliminary planning report; email re: same; email opposing counsel re: same	1.80 hrs	210/hr	\$378.00	0
		11/06/15	RLA	Letter to and letter from client	0.20 hrs	490/hr	\$98.00	0
L140	A103	11/06/15	ACAM	Review joint preliminary report and discovery plan and update event dates in Prolaw	0.20 hrs	180/hr	\$36.00	0
		11/08/15	RLA	Conference with PRB; telephone conference and conference with TRJ and JDG; telephone conference with Grady Murdoch; work on scheduling order issues	1.30 hrs	490/hr	\$637.00	0
		11/09/15	RLA	Letter from referring counsel; letter to Robin Potter, potential Illinois counsel; letter from and letter to Judge Thrash's office; letters from ITW counsel; letters from client re: Mexico situation and job performance; letter from PRB and client re: scope of discovery and purposed of hearing before Judge Thrash	1.50 hrs	490/hr	\$735.00	0
		11/09/15	PRB	Confer with client about upcoming hearing	0.30 hrs	250/hr	\$75.00	0
		11/10/15	TRJ	Plan and strategize in preparation for hearing re: scope of discovery	0.10 hrs	210/hr	\$21.00	0
		11/11/15	RLA	Conference with TRJ	0.30 hrs	490/hr	\$147.00	0
		11/16/15	RLA	Conference with TRJ re: hearing issues and defendant's irrelevant case citations	0.40 hrs	490/hr	\$196.00	0
		11/16/15	TRJ	Prepare outline for hearing re: scope of discovery; discuss same	2.50 hrs	210/hr	\$525.00	0
L140	A103	11/16/15	ACAM	Review hearing notice and update event dates in Prolaw	0.20 hrs	180/hr	\$36.00	0
		11/17/15	RLA	Conference with TRJ; preparation for tomorrow's hearing; read cited cases	1.40 hrs	490/hr	\$686.00	0
		11/17/15	TRJ	Research 11th Circuit cases re: scope of discovery in ERISA benefits litigation; review client documents and correspondence with plan administrator; revise outline in preparation for hearing	1.50 hrs	210/hr	\$315.00	0
		11/18/15	RLA	Review court order	0.10 hrs	490/hr	\$49.00	0
		11/18/15	RLA	Letter to Grady Murdock	0.10 hrs	490/hr	\$49.00	0
		11/18/15	RLA	Work on discovery list	0.60 hrs	490/hr	\$294.00	0
		11/18/15	RLA	Letter to W. Stockard re: depositions	0.20 hrs	490/hr	\$98.00	0
		11/18/15	RLA	Letter from, letter to and telephone conference with client with TRJ	0.70 hrs	490/hr	\$343.00	0
		11/18/15	RLA	Debrief with TRJ	0.40 hrs	490/hr	\$196.00	0

		11/18/15	RLA	Attend hearing with TRJ before Judge Thrash; conference with Wes Stockard	0.10 hrs	490/hr	\$49.00	0
		11/18/15	RLA	Conference with TRJ to help her prepare for hearing with TRJ	0.70 hrs	490/hr	\$343.00	0
		11/18/15	TRJ	Prepare for hearing re: scope of discovery; travel to/from hearing; participate in hearing; discuss same	2.70 hrs	210/hr	\$567.00	0
		11/18/15	TRJ	Telephone conference with client re: hearing on discovery and next steps	0.70 hrs	210/hr	\$147.00	0
		11/19/15	RLA	Letter from TV producer re: "David and Goliath" feature via JCM; letter to and telephone conference with JCM; letter to client; Work on discovery to ITW	1.20 hrs	490/hr	\$588.00	0
		11/20/15	RLA	Letters to and letters from client and letters to TRJ	0.40 hrs	490/hr	\$196.00	0
		11/21/15	RLA	Letter from and letter to client, cc TRJ	0.30 hrs	490/hr	\$147.00	0
		11/22/15	RLA	Work on discovery; letters to and letter from client	0.80 hrs	490/hr	\$392.00	0
		11/23/15	RLA	Entry of consent order pleading	0.10 hrs	490/hr	\$49.00	0
L140	A103	11/24/15	ACAM	Review scheduling order and update event dates in Prolaw	0.20 hrs	180/hr	\$36.00	0
		11/25/15	RLA	Letters to and letter from client	0.30 hrs	490/hr	\$147.00	0
		11/25/15	RLA	Letters from and letters to client	0.30 hrs	490/hr	\$147.00	0
		11/28/15	RLA	Letters to and letter from client	0.30 hrs	490/hr	\$147.00	0
		11/30/15	RLA	Work on discovery; work on factual research	0.60 hrs	490/hr	\$294.00	0
		11/30/15	TRJ	Draft Plaintiff's Initial Disclosures	1.70 hrs	210/hr	\$357.00	0
		12/01/15	RLA	Review and edit TRJ initial disclosures draft; letters from and letters to TRJ and client	0.70 hrs	490/hr	\$343.00	0
		12/01/15	PRB	Analyze draft initial disclosures	0.50 hrs	250/hr	\$125.00	0
		12/01/15	TRJ	Draft plaintiff's initial disclosures; revise same	1.80 hrs	210/hr	\$378.00	0
		12/01/15	TRJ	Emails to client re: initial disclosures	0.30 hrs	210/hr	\$63.00	0
		12/01/15	TRJ	Telephone conference with client re: initial disclosures	0.70 hrs	210/hr	\$147.00	0
		12/02/15	TRJ	Review and revise initial disclosures; prepare same for filing	0.30 hrs	210/hr	\$63.00	0
		12/02/15	TRJ	Review defendants' initial disclosures; email client re: same	0.20 hrs	210/hr	\$42.00	0
		12/03/15	RLA	Letter from and conference with TRJ; letter from and letter to ITW counsel; review ITW's filing; letter to ITW counsel re: media inquiry	0.70 hrs	490/hr	\$343.00	0

		12/03/15	TRJ	Telephone and email correspondence with opposing counsel re: ESI conference; discuss same	0.30 hrs	210/hr	\$63.00	0
		12/03/15	TRJ	Review and prepare initial disclosure documents for production to defendants; discuss same	1.20 hrs	210/hr	\$252.00	0
		12/04/15	RLA	Conference with TRJ	0.20 hrs	490/hr	\$98.00	0
		12/04/15	TRJ	Discuss plan for ESI conference and discovery requests to ITW	0.30 hrs	210/hr	\$63.00	0
		12/04/15	TRJ	Email opposing counsel re: initial disclosure production and ESI conference; email client re: same	1.80 hrs	210/hr	\$378.00	0
L140	A103	12/04/15	ACAM	Prepare documents for TRJ to send to opposing counsel	0.20 hrs	180/hr	\$36.00	0
		12/07/15	RLA	Conference with TRJ; prepare for and telephone conference with ITW counsel with TRJ; letter to ITW counsel re: deposition scheduling and media issue	1.20 hrs	490/hr	\$588.00	0
		12/07/15	TRJ	Telephone conference with opposing counsel re: ESI discovery	0.80 hrs	210/hr	\$168.00	0
		12/08/15	RLA	Conference with TRJ; work on draft discovery; start review of administrative record	1.20 hrs	490/hr	\$588.00	0
		12/08/15	TRJ	Review ITW's initial disclosure documents and send to client	0.20 hrs	210/hr	\$42.00	0
L140	A103	12/08/15	ACAM	Review correspondence re: Defendant's initial disclosure production; review and file production documents	0.20 hrs	180/hr	\$36.00	0
		12/09/15	RLA	Letter from and telephone conference with client; draft discovery pleadings after relevant file review	1.60 hrs	490/hr	\$784.00	0
		12/10/15	RLA	Work on discovery, related file review and client's suggestions	1.60 hrs	490/hr	\$784.00	0
		12/11/15	RLA	Complete work on discovery drafts; conference with TRJ; review TRJ edits and client input; get discovery served on ITW counsel; telephone conference, letters to and letters from client; letter from Shella Neba, ITW counsel	2.30 hrs	490/hr	\$1,127.00	0
		12/11/15	TRJ	Review and revise written discovery to defendants	1.30 hrs	210/hr	\$273.00	0
		12/14/15	RLA	Letter from client; letter to ITW counsel	0.30 hrs	490/hr	\$147.00	0
L140	A103	12/14/15	ACAM	Review discovery requests and update event dates in Prolaw	0.20 hrs	180/hr	\$36.00	0
L140	A103	12/14/15	ACAM	Review Plaintiff's response to Defendant's motion to dismiss and update event dates in Prolaw	0.20 hrs	180/hr	\$36.00	0
		12/21/15	RLA	Letter to and letter from client; letter to and letter from TRJ; letter to ITW counsel	0.60 hrs	490/hr	\$294.00	0

		12/22/15	RLA	Letter from and letter to ITW counsel; letter to and letter from TRJ	0.30 hrs	490/hr	\$147.00	0
		01/05/16	TRJ	Telephone conference with opposing counsel re: discovery responses	0.10 hrs	210/hr	\$21.00	0
		01/06/16	TRJ	Email opposing counsel re: extension for written discovery responses	0.40 hrs	210/hr	\$84.00	0
		01/12/16	RLA	Letter to potential witness; letters from, letters to and telephone conference with client; conference with TRJ	0.90 hrs	490/hr	\$441.00	0
		01/13/16	RLA	Letter from, letter to and conference with TRJ; review and edit deposition notices; conferences with RTC, TRJ and WJH re: same; letter to ITW counsel re: accepting witness subpoenas	0.80 hrs	490/hr	\$392.00	0
		01/15/16	RLA	Letter from and letter to Wes Stockard; telephone conference with Mr. Stockard; letter to TRJ	0.80 hrs	490/hr	\$392.00	0
		01/18/16	TRJ	Prepare notices of deposition; email same to opposing counsel	0.30 hrs	210/hr	\$63.00	0
		01/26/16	RLA	Review and analysis of discovery pleadings from ITW counsel; conference with TRJ	0.60 hrs	490/hr	\$294.00	0
		01/27/16	RLA	Telephone conference with witness	0.40 hrs	490/hr	\$196.00	0
		01/27/16	SKB	Process incoming discovery from defendant, download document production, send same to client via Hightail	1.00 hrs	190/hr	\$190.00	0
		01/31/16	RLA	Letter from client	0.20 hrs	490/hr	\$98.00	0
		02/01/16	RLA	Letter to and letter from TRJ	0.20 hrs	490/hr	\$98.00	0
		02/02/16	RLA	Letter from W. Stockard	0.20 hrs	490/hr	\$98.00	0
		02/02/16	TRJ	Review correspondence re: depositions; review scheduling order; email re: same	0.30 hrs	210/hr	\$63.00	0
		02/03/16	TRJ	Review defendants' responses to discovery requests	1.10 hrs	210/hr	\$231.00	0
L140	A103	02/03/16	ACAM	Review Defendant's discover requests and update event dates in Prolaw	0.20 hrs	190/hr	\$38.00	0
		02/04/16	RLA	Client communications	0.30 hrs	490/hr	\$147.00	0
		02/08/16	RLA	Conference with TRJ; telephone conference with client; letter to ITW counsel	0.70 hrs	490/hr	\$343.00	0
		02/08/16	TRJ	Review and discuss defendants' responses to discovery requests; review defendants' document production; email client re: discovery requests	2.50 hrs	210/hr	\$525.00	0
		02/09/16	RLA	Conferences with TRJ; telephone conference with client	0.60 hrs	490/hr	\$294.00	0
		02/09/16	TRJ	Review local rules and court orders re: discovery	0.40 hrs	210/hr	\$84.00	0



		disputes; discuss same				
02/10/16	RLA	Letter from W. Stockard, ITW counsel	0.20 hrs	490/hr	\$98.00	0
02/10/16	TRJ	Review correspondence from opposing counsel re: good faith conferral of discovery disputes	0.20 hrs	210/hr	\$42.00	0
02/11/16	TRJ	Review defendants' discovery requests	0.30 hrs	210/hr	\$63.00	0
02/15/16	RLA	Letter to and letter from TRJ; letter to ITW counsel; letter from and letter to client	0.40 hrs	490/hr	\$196.00	0
02/16/16	RLA	Letters from and letters to W. Stockard; letter to TRJ	0.60 hrs	490/hr	\$294.00	0
02/17/16	RLA	Prepare for tomorrow's conferral call with relevant file review; conference with TRJ; letters from client	1.40 hrs	490/hr	\$686.00	0
02/17/16	TRJ	Discuss preparation for discovery dispute meeting with opposing counsel	0.10 hrs	210/hr	\$21.00	0
02/18/16	RLA	Review and analysis in preparation for telephone conferral last night and this morning with review of ITW's objections, answers and non-answers; conference with TRJ; participate in conferral call with ITW counsel and TRJ; debrief; letters to, letters from and telephone conference with client; letter to and letter from ITW counsel	3.40 hrs	490/hr	\$1,666.00	0
02/18/16	TRJ	Prepare for discovery conferral with opposing counsel re: discovery dispute; telephone conference with opposing counsel re: discovery dispute; discuss same; email opposing counsel re: discovery disputes	2.90 hrs	210/hr	\$609.00	0
02/19/16	RLA	Letter to and letter from David Boysen and TRJ	0.30 hrs	490/hr	\$147.00	0
02/19/16	TRJ	Draft proposed search terms and revised requests for admissions; email communications with client re: same	2.50 hrs	210/hr	\$525.00	0
02/22/16	RLA	Letter to and letters from TRJ	0.30 hrs	490/hr	\$147.00	0
02/22/16	PRB	Confer with TRJ about communications with ITW	0.20 hrs	250/hr	\$50.00	0
02/22/16	TRJ	Email opposing counsel re: proposed search terms and custodians	0.20 hrs	210/hr	\$42.00	0
02/22/16	TRJ	Telephone conference with client re: search terms and discovery	0.50 hrs	210/hr	\$105.00	0
02/22/16	TRJ	Draft responses to ITW's written discovery requests	2.30 hrs	210/hr	\$483.00	0
02/22/16	TRJ	Email client re: proposed search terms; review client emails re: discovery responses; revise search terms	0.40 hrs	210/hr	\$84.00	0
02/23/16	RLA	Letter from and letter to TRJ and client	0.20 hrs	490/hr	\$98.00	0
02/23/16	PRB	Review file communications and confer with TRJ about requests for admissions regarding certain communications	0.80 hrs	250/hr	\$200.00	0



		02/23/16	TRJ	Discuss ITW's discovery requests and prior communications with the plan administrator	0.20 hrs	210/hr	\$42.00	0
		02/23/16	TRJ	Draft amended Request for Admission #19	0.20 hrs	210/hr	\$42.00	0
		02/24/16	WJH	Review motion for extension and conference with TRJ re: same	0.70 hrs	595/hr	\$416.50	0
		02/24/16	RLA	Letters from and letters to TRJ; scan proposed motion for extension of discovery	0.60 hrs	490/hr	\$294.00	0
		02/24/16	TRJ	Draft motion for extension of discovery period; review and revise same; discuss same	5.10 hrs	210/hr	\$1,071.00	0
		02/25/16	TRJ	Review and revise motion for extension of discovery period; file same; draft responses to defendants' discovery requests; telephone conference with client re: same	4.90 hrs	210/hr	\$1,029.00	0
		02/26/16	TRJ	Email correspondence with client re: discovery responses; review client emails; draft interrogatory responses	3.90 hrs	210/hr	\$819.00	0
L140	A103	02/26/16	ACAM	Convert emails from client and redact for production	3.50 hrs	190/hr	\$665.00	0
		02/28/16	TRJ	Review client interrogatory revisions and questions re: same; email client re: same	0.30 hrs	210/hr	\$63.00	0
		02/29/16	RLA	Letters to and letters from TRJ; letter from ITW counsel	0.70 hrs	490/hr	\$343.00	0
		02/29/16	TRJ	Review additional correspondence from client re: additional potential witnesses; revise interrogatory responses	0.30 hrs	210/hr	\$63.00	0
		03/01/16	RLA	Letter from and conferences with TRJ and client; telephone conference with calendar clerk; review draft discovery answers; letter from and letter to ITW counsel W. Stockard from TRJ; letter from court	1.10 hrs	490/hr	\$539.00	0
		03/01/16	TRJ	Email opposing counsel re: discovery dispute and outstanding issues; discuss same; telephone conference with chambers re: scheduling in-person hearing on discovery dispute; telephone conference with client re: discovery responses; review and revise discovery responses; email client re: same	4.10 hrs	210/hr	\$861.00	0
		03/02/16	TRJ	Review and prepare client documents for production to defendants; discuss same with client and summarize concerns re: same	3.10 hrs	210/hr	\$651.00	0
		03/02/16	TRJ	Review and revise discovery responses	0.90 hrs	210/hr	\$189.00	0
		03/03/16	TLT	[Write-off] Discuss motion to compel arguments and structure; review and revise brief in support of motion to compel	2.30 hrs	430/hr	\$989.00	0
		03/03/16	TRJ	Draft motion to compel discovery; discuss same; discuss client documents and production of same;	14.00 hrs	210/hr	\$2,940.00	0

				telephone conference with judge's clerk re: scheduling hearing; email opposing counsel re: client's discovery responses				
L140	A103	03/03/16	ACAM	Review Plaintiff's discovery responses and update event dates in Prolaw	0.20 hrs	190/hr	\$38.00	0
		03/04/16	TRJ	Review defendants' production; discuss same with client; discuss production of documents and email opposing counsel re: same	0.80 hrs	210/hr	\$168.00	0
L140	A103	03/04/16	ACAM	Review hearing notice and update event dates in Prolaw	0.20 hrs	190/hr	\$38.00	0
L140	A103	03/04/16	ACAM	Review and file documents produced by Defendant	0.20 hrs	190/hr	\$38.00	0
		03/07/16	RLA	Conference with TRJ re: Sean defendant's proposed confidentiality order; Letter from TRJ/ITW Counsel	0.60 hrs	490/hr	\$294.00	0
		03/07/16	TRJ	Discuss revisions to proposed confidentiality agreement and protective order and production of client documents; prepare client documents for production; email opposing counsel re: same	1.50 hrs	210/hr	\$315.00	0
		03/08/16	RLA	Conference with TRJ; review revised confidentiality order draft	0.60 hrs	490/hr	\$294.00	0
		03/08/16	TRJ	Review and revise confidentiality agreement	1.30 hrs	210/hr	\$273.00	0
36	A110	03/08/16	MCLI	Preparation of Annual Reports for attorney working notebook; electronic distribution of same to client for review; uploading of reports to internal network	3.00 hrs	200/hr	\$600.00	0
L140	A103	03/09/16	ACAM	Review hearing cancellation and update event dates in Prolaw	0.20 hrs	190/hr	\$38.00	0
L140	A103	03/09/16	ACAM	Review motion to compel and update event dates in Prolaw	0.20 hrs	190/hr	\$38.00	0
L140	A103	03/10/16	ACAM	Review hearing notice and update event dates in Prolaw	0.20 hrs	190/hr	\$38.00	0
		03/14/16	RLA	Notice from court	0.10 hrs	490/hr	\$49.00	0
		03/15/16	RLA	Letter from client; conferences with TRJ	0.30 hrs	490/hr	\$147.00	0
		03/15/16	TRJ	Review defendants' opposition to motion to extend discovery	0.10 hrs	210/hr	\$21.00	0
		03/16/16	TRJ	Review defendants' opposition to motion for discovery extension; research 11th Circuit law re: discovery where conflict of interest; telephone conference with opposing counsel re: additional discovery conferral	1.00 hrs	210/hr	\$210.00	0
		03/17/16	RLA	Prepare for and participate with TRJ in telephone conferral with ITW Counsel; Review and comment on ITW's opposition to Boysen motion for extension; Conference with TRJ	0.90 hrs	490/hr	\$441.00	0

		03/17/16	TRJ	Discuss reply brief in support of motion to extend discovery; review search terms and discovery responses; telephone conference with opposing counsel re: search terms	1.50 hrs	210/hr	\$315.00	0
		03/22/16	RLA	Read and comment on defendant's brief and cited cases; conference with TRJ; Letter from client	1.10 hrs	490/hr	\$539.00	0
		03/22/16	TRJ	Discuss defendants' opposition to motion to compel	0.10 hrs	210/hr	\$21.00	0
L140	A103	03/22/16	ACAM	Reveiw Defendant's response in opposition to Plaintiff's motion to compel discovery and update event dates in Prolaw	0.20 hrs	190/hr	\$38.00	0
E124	A111	03/22/16	MCLI	Conference with RLA; prepare attorney working binder re: Motion to Compel and supporting documents; Westlaw research and printing of cases	1.00 hrs	200/hr	\$200.00	0
		03/23/16	RLA	Letters from conference with TRJ; Letter from S. Neba, ITW Counsel	0.20 hrs	490/hr	\$98.00	0
		03/23/16	TRJ	Draft reply in support of motion to extend discovery; telephone conference with opposing counsel re: search terms; discuss same; prepare for hearing re: motion to compel and motion to extend discovery	9.00 hrs	210/hr	\$1,890.00	0
		03/24/16	RLA	Complete hearing preparation; Conference with TRJ; Represent client with TRJ at hearing before Judge Thrash; Debrief with TRJ; Help draft order requested by Judge Thrash; Letter from and letter to client	2.30 hrs	490/hr	\$1,127.00	0
		03/24/16	TRJ	Review filings re: motion to extend discovery and motion to compel discovery and prepare for hearing re: same; telephone conference with clerk re: restriction of inadvertently filed confidential documents; travel to/from hearing; appear for hearing; discuss same; draft proposed order	6.50 hrs	210/hr	\$1,365.00	0
		03/25/16	RLA	Letter from TRJ re: ITW's latest letter to court	0.20 hrs	490/hr	\$98.00	0
		03/25/16	RLA	Review draft order; Conference with TRJ	0.40 hrs	490/hr	\$196.00	0
		03/25/16	TRJ	Review and revise proposed order; discuss same; telephone conference with court reporter re: transcript of hearing; review defendants' objection to proposed order and discuss same	0.80 hrs	210/hr	\$168.00	0
		03/26/16	RLA	Review ITW Counsel's order objection email and counter proposal	0.40 hrs	490/hr	\$196.00	0
		03/28/16	RLA	Letter from and conference with TRJ; Review and edit TRJ's draft reply	0.40 hrs	490/hr	\$196.00	0
		03/28/16	TRJ	Draft response to defendants' objection to proposed order; discuss and revise same	1.50 hrs	210/hr	\$315.00	0
		03/30/16	RLA	Letter from court reporter/TRJ	0.10 hrs	490/hr	\$49.00	0
		03/31/16	RLA	Letter from TRJ	0.10 hrs	490/hr	\$49.00	0

		03/31/16	RLA	Letter from ITW Counsel/Judge Thrash	0.30 hrs	490/hr	\$147.00	0
		04/01/16	TRJ	Review opposing counsel's additional objection to proposed order	0.20 hrs	210/hr	\$42.00	0
		04/05/16	RLA	Conference with TRJ re: discovery	0.20 hrs	490/hr	\$98.00	0
		04/25/16	RLA	Conference with TRJ	0.10 hrs	490/hr	\$49.00	0
		05/02/16	RLA	Conference with TRJ re: pending orders	0.20 hrs	490/hr	\$98.00	0
		05/09/16	TRJ	Draft additional requests for production to defendants	1.00 hrs	210/hr	\$210.00	0
		05/11/16	TRJ	Discuss additional document requests to defendants; revise same; draft and file Rule 5.4 certificate of service of discovery	1.90 hrs	210/hr	\$399.00	0
L140	A103	05/12/16	ACAM	Review Plaintiff's second request for production of documents to Defendants and update event dates in Prolaw	0.20 hrs	190/hr	\$38.00	0
		05/18/16	RLA	Letter from TRJ/ITW counsel	0.10 hrs	490/hr	\$49.00	0
		05/18/16	TRJ	Email opposing counsel re: deposition of plan administrator	0.10 hrs	210/hr	\$21.00	0
		05/23/16	RLA	Notice from court re: order entered in apparent error; letters from, letters to and conference with TRJ	0.40 hrs	490/hr	\$196.00	0
		05/23/16	TRJ	Review order granting in part and denying in part motion to compel discovery; email re: same to RLA; telephone conference with judicial assistant re: order extending discovery period; strategize approach to opposing counsel re: discovery period	1.60 hrs	210/hr	\$336.00	0
		05/24/16	RLA	Conferences with TRJ; review and comment on TRJ draft pleadings; telephone conferences with TRJ	0.70 hrs	490/hr	\$343.00	0
		05/24/16	TRJ	Review and revise confidentiality order; strategize request to opposing counsel re: discovery extension; draft email re: same; email opposing counsel re: discovery; draft emergency motion to modify order; discuss same; email client re: status of discovery and court's order re: same; discuss opposing counsel's response to request for extension of time to conduct discovery	6.30 hrs	210/hr	\$1,323.00	0
		05/25/16	RLA	Review ITW's counsel's negative email; review court's order; coordinate noticing of Goldman deposition at O'Hare airport; letter from and letter to ITW counsel; telephone conference with TRJ; letter from, letter to and telephone conference with D. Boysen	1.20 hrs	490/hr	\$588.00	0
		05/25/16	RLA	Letters to and letters from ITW counsel; conference with TRJ	0.60 hrs	490/hr	\$294.00	0
		05/25/16	TRJ	Draft notice of deposition of plan administrator; discuss same; email opposing counsel re: same;	3.20 hrs	210/hr	\$672.00	0

				discuss outstanding discovery and response to opposing counsel's refusal to comply with same; email opposing counsel re: discovery issues;				
		05/26/16	RLA	Letter from and letter to ITW counsel; telephone conference with TRJ	0.40 hrs	490/hr	\$196.00	0
		05/26/16	TRJ	Email opposing counsel re: outstanding discovery; strategize response to opposing counsel re: discovery scheduling	0.90 hrs	210/hr	\$189.00	0
L140	A103	05/31/16	ACAM	Review scheduling order and update event dates in Prolaw	0.20 hrs	190/hr	\$38.00	0
		06/02/16	RLA	Letters from, letters to and telephone conference with client regarding position logistics; conference with TRJ	0.70 hrs	490/hr	\$343.00	0
		06/02/16	TRJ	Review correspondence from opposing counsel re: discovery issues; draft notice of deposition; strategize Goldman deposition notice and scheduling; discuss confidentiality agreement provisions; email opposing counsel re: confidentiality agreement and deposition scheduling	0.80 hrs	210/hr	\$168.00	0
		06/06/16	RLA	Letters to and letters from client with proposed questions	0.90 hrs	490/hr	\$441.00	0
		06/06/16	RLA	Work on deposition logistics; letter from client	0.80 hrs	490/hr	\$392.00	0
L140	A103	06/06/16	ACAM	Review deposition notice for Mr. Goldman and update event dates in Prolaw	0.20 hrs	190/hr	\$38.00	0
		06/08/16	RLA	Letter from S. Neba; letter from David Boysen; letter from TRJ; call re ITW subpoena to Boysen's employer	0.40 hrs	490/hr	\$196.00	0
		06/08/16	PRB	Review information about subpoena request	0.20 hrs	250/hr	\$50.00	0
		06/08/16	TRJ	Review non-party subpoena by ITW; email client re: same; discuss same	0.50 hrs	210/hr	\$105.00	0
		06/09/16	RLA	Logistics for Goldman deposition	1.20 hrs	490/hr	\$588.00	0
L140	A103	06/09/16	ACAM	review non-party subpoena and update event dates in Prolaw	0.20 hrs	190/hr	\$38.00	0
		06/10/16	RLA	Letter from, letters to and telephone conference with client; letter to ITW counsel re subpoena; letters to and letter from court reporter	0.80 hrs	490/hr	\$392.00	0
		06/12/16	RLA	Letter from client with additional questions	0.20 hrs	490/hr	\$98.00	0
		06/13/16	TRJ	Review defendants' discovery responses; strategize necessity of discovery motions and opposition to third party subpoena	0.70 hrs	210/hr	\$147.00	0
L140	A103	06/14/16	ACAM	Review Defendant's responses to Plaintiff's second request for production of documents and update event dates in Prolaw	0.20 hrs	190/hr	\$38.00	0

		06/15/16	TRJ	Strategize responses to discovery disputes; email opposing counsel re: third party subpoena to client's current employer; review client personnel file with current employer and discuss same	0.60 hrs	210/hr	\$126.00	0
		06/17/16	TRJ	Review ITW's documents in preparation for deposition of Elliot Goldman	3.10 hrs	210/hr	\$651.00	0
		06/20/16	RLA	Conference with TRJ; work on deposition preparations	0.80 hrs	490/hr	\$392.00	0
		06/20/16	TRJ	Draft topic outline for deposition of Elliot Goldman; research ERISA summary judgment cases and analyze disputed issues of fact	3.20 hrs	210/hr	\$672.00	0
		06/21/16	RLA	Letter from and letters to client; conference with TRJ; work on deposition preparation	1.40 hrs	490/hr	\$686.00	0
		06/21/16	TRJ	Draft outline for deposition of Elliot Goldman; review ITW documents in preparation for Goldman deposition; discuss same; email with client re: deposition; outline goals for deposition	5.80 hrs	210/hr	\$1,218.00	0
L140	A103	06/21/16	ACAM	Review and file document produced by Defendant	0.20 hrs	190/hr	\$38.00	0
		06/22/16	RLA	Work on Goldman deposition preparation; extensive document review; conferences with TRJ; conferences with S. Burdette; travel to Chicago	9.80 hrs	490/hr	\$4,802.00	0
		06/22/16	TRJ	Review outline and prepare exhibits for deposition of Elliot Goldman; email client re: same; discuss same	2.20 hrs	210/hr	\$462.00	0
		06/22/16	SKB	Prepare exhibits and attorney materials for deposition	3.80 hrs	190/hr	\$722.00	0
E124	A111	06/22/16	MCLI	Deposition/exhibit preparation	1.00 hrs	200/hr	\$200.00	0
		06/23/16	RLA	Complete preparation for Goldman deposition; conferences with client; take Goldman deposition; debrief with client; return to Atlanta	16.30 hrs	490/hr	\$7,987.00	0
		06/24/16	RLA	Letter from client; debrief TRJ; debrief S. Burdette	0.80 hrs	490/hr	\$392.00	0
		06/24/16	TRJ	Discuss deposition of Elliot Goldman and follow up from same; telephone conference with videographer re: deposition video	0.50 hrs	210/hr	\$105.00	0
		06/27/16	RLA	Letter from and letter to videography firm; letters to and letter from client	0.30 hrs	490/hr	\$147.00	0
		06/28/16	RLA	Review and annotate job differences; emails from client; conference with TRJ	0.60 hrs	490/hr	\$294.00	0
		06/28/16	TRJ	Discuss discovery items to follow up on with opposing counsel	0.10 hrs	210/hr	\$21.00	0
		06/29/16	RLA	Letter from, telephone conference with and conference with TRJ; letter to ITW counsel; letters from and letters to client	0.60 hrs	490/hr	\$294.00	0

		06/29/16	TRJ	Review discovery requests and determine whether additional information from deposition of Mr. Goldman supports disclosure of previously withheld documents; discuss same	0.40 hrs	210/hr	\$84.00	0
E124	A111	06/29/16	MCLI	Draft and file Notice of Leave	0.50 hrs	200/hr	\$100.00	0
		07/01/16	RLA	Letter from client	0.10 hrs	490/hr	\$49.00	0
		07/05/16	RLA	Letter from and letter to ITW counsel; letter from, letter to, conference with TRJ review Local Rule	0.60 hrs	490/hr	\$294.00	0
		07/05/16	RLA	Letter from TRJ	0.10 hrs	490/hr	\$49.00	0
		07/05/16	PRB	Review confidentiality agreement and settlement communications	0.80 hrs	250/hr	\$200.00	0
		07/05/16	TRJ	Review local rules re: settlement conference before trial; email RLA re: same; discuss same; email opposing counsel re: LR 16.3 conference; discuss opposing counsel's response to request for Rule 16.3 conference; email correspondence re: settlement conference	0.70 hrs	210/hr	\$147.00	0
		07/06/16	RLA	Letter from and letter to TRJ; letter to TRJ/ITW counsel; letters to court reporter re Goldman transcript	0.40 hrs	490/hr	\$196.00	0
		07/06/16	TRJ	Discuss settlement conference and stipulation re: same; email opposing counsel re: same	0.20 hrs	210/hr	\$42.00	0
		07/08/16	RLA	Letters from and letters to ITW counsel W. Stockard; letter to TRJ; letters to and letter from client	0.70 hrs	490/hr	\$343.00	0
		07/08/16	TRJ	Email correspondence re: settlement conference	0.30 hrs	210/hr	\$63.00	0
		07/14/16	RLA	Prepare for tomorrow's meeting; letter to TRJ; letter to court reporter	0.60 hrs	490/hr	\$294.00	0
		07/15/16	RLA	Start review of Goldman deposition	0.70 hrs	490/hr	\$343.00	0
		07/15/16	RLA	Telephone conference with client; conference with TRJ; go with TRJ to court, required in-person; settlement meeting with ITW counsel; debrief with TRJ; telephone conference with client with TRJ to report on ITW's \$5000 offer	2.40 hrs	490/hr	\$1,176.00	0
		07/15/16	TRJ	Telephone conferences with client re: settlement authority; travel to/from opposing counsel's office for settlement conference; attend settlement conference; discuss same	2.10 hrs	210/hr	\$441.00	0
		07/18/16	RLA	Telephone conference with TRJ re document motions	0.10 hrs	490/hr	\$49.00	0
		07/18/16	TRJ	Review Goldman deposition transcript	3.10 hrs	210/hr	\$651.00	0
		07/18/16	SKB	Download of Elliott Goldman deposition transcripts and exhibits to M drive, print transcript copy for TRJ review	0.30 hrs	190/hr	\$57.00	0



		07/19/16	RLA	Start review of Goldman deposition transcript	1.20 hrs	490/hr	\$588.00	0
		07/19/16	TRJ	Review Goldman deposition transcript; telephone conference with opposing counsel	3.70 hrs	210/hr	\$777.00	0
		07/20/16	RLA	Continued review of Goldman deposition transcript; letter from, letter to and telephone conferences with Shella Neba; conference with PRB	1.70 hrs	490/hr	\$833.00	0
		07/20/16	PRB	Confer with RLA about making appearance; review case materials and discovery documents; review settlement communications and confer with RLA and TRJ; supervise filing of notice of appearance	3.10 hrs	250/hr	\$775.00	0
		07/20/16	TRJ	Draft email summary of telephone conference with opposing counsel and analysis of evidence in light of Mr. Goldman's deposition; discuss same	2.10 hrs	210/hr	\$441.00	0
E124	A111	07/20/16	MCLI	Download and printing of Goldman exhibits for attorney review	0.60 hrs	200/hr	\$120.00	0
		07/21/16	RLA	Complete Goldman transcript and exhibits, review and comment; conference with PRB; brief, review and draft motions for document production	2.30 hrs	490/hr	\$1,127.00	0
		07/21/16	PRB	Begin work on motion to compel; review pertinent procedural history and key portions of deposition testimony; revise motion, confer with RLA, and supervise filing	4.90 hrs	250/hr	\$1,225.00	0
		07/21/16	TRJ	Review Goldman deposition; discuss same and motion to compel discovery; draft motion to compel discovery; discuss same	4.60 hrs	210/hr	\$966.00	0
		07/22/16	RLA	Review documents motion as filed; deposition billing logistics	0.60 hrs	490/hr	\$294.00	0
E124	A111	07/22/16	MCLI	Conference with PRB re: filing of Motion to Compel Limited Discovery Prior to Consideration of Summary Judgment and Incorporated Brief in Support with exhibits; assist with preparation of exhibits and filing of same; emails with RLA re: receipt/review of ITW's brief and statement of uncontested material facts; return travel to office for print and distribution; distribution of Goldman deposition to client for review/comment	2.50 hrs	200/hr	\$500.00	0
		07/24/16	PRB	Boysen. Review communications regarding requested extension of time to respond to summary-judgment motion; review settlement communications	0.40 hrs	250/hr	\$100.00	0
		07/25/16	PRB	Review settlement communications; review communications about summary judgment response	0.40 hrs	250/hr	\$100.00	0
E124	A111	07/25/16	MCLI	Email with PRB re: docketing of Reponse in Opposition to Motion for Summary Judgment; research re: same; docket management	0.20 hrs	200/hr	\$40.00	0



		07/26/16	WJH	Review status and conference with PRB re: strategy (No charge to client)	0.70 hrs	595/hr	\$416.50	0
		07/26/16	PRB	Research case law supporting an extension of time under Rule 56(d) to respond to the summary judgment motion	3.90 hrs	250/hr	\$975.00	0
		07/26/16	TRJ	Review defendants' motion for summary judgment; discuss same	1.00 hrs	210/hr	\$210.00	0
L140	A103	07/26/16	ACAM	Review Plaintiff's motion to compel limited discovery prior to consideration of summary judgment and update event dates in Prolaw	0.20 hrs	190/hr	\$38.00	0
L140	A103	07/26/16	ACAM	Review Defendant's motion for summary judgment and update event dates in Prolaw	0.20 hrs	190/hr	\$38.00	0
E124	A111	07/26/16	MCLI	Email with distribution of Defendants' Motion for Summary Judgment, Brief in Support and Statement of Material Facts; upload same to network for attorney review; prepare attorney working notebook for PRB	0.70 hrs	200/hr	\$140.00	0
		07/27/16	TRJ	Review defendants' motion for summary judgment and strategize arguments in opposition	1.20 hrs	210/hr	\$252.00	0
E124	A111	07/28/16	MCLI	Emails and office conference with PRB re: filing of Motion to Compel, Brief in Support and exhibits; filing with distribution of same	1.00 hrs	200/hr	\$200.00	0
		08/01/16	PRB	Begin review of deposition transcript	3.30 hrs	250/hr	\$825.00	0
		08/01/16	TRJ	Review defendants' discovery responses and statement of material facts and strategize response arguments to motion for summary judgment; review client comments re: same	3.10 hrs	210/hr	\$651.00	0
		08/02/16	PRB	Continue review of Goldman deposition transcript; identify potential testimony for Rule 56(d) motion	4.30 hrs	250/hr	\$1,075.00	0
		08/02/16	TRJ	Discuss arguments in response to motion for summary judgment; review emails re: defendants' document production	0.20 hrs	210/hr	\$42.00	0
		08/03/16	PRB	Draft emergency 56(d) motion in opposition to Plaintiffs' motion for summary judgment	5.70 hrs	250/hr	\$1,425.00	0
		08/04/16	PRB	Revise and supervise filing	1.30 hrs	250/hr	\$325.00	0
		08/04/16	TRJ	Review defendants' motion for summary judgment; discuss same and strategy for responding to same; research ERISA summary judgment standard and cases re: denial of benefits	3.30 hrs	210/hr	\$693.00	0
		08/05/16	PRB	Begin research of case law and arguments in Plaintiffs' motion for summary judgment	4.20 hrs	250/hr	\$1,050.00	0
		08/05/16	PRB	Confer with TRJ about summary judgment arguments	1.30 hrs	250/hr	\$325.00	0

08/05/16	PRB	Review document production and identify exhibits to use in response to summary judgment; confer with opposing counsel about response deadline	3.90 hrs	250/hr	\$975.00	0
08/05/16	TRJ	Research summary judgment cases re: denial of benefits; summarize same; discuss same	5.20 hrs	210/hr	\$1,092.00	0
08/06/16	PRB	Research case law finding that the refusal to consider information is arbitrary and capricious; research remand options	4.70 hrs	250/hr	\$1,175.00	0
08/07/16	PRB	Analyze record and begin work drafting statement of facts showing the deficiency of Mr. Goldman's investigation	3.90 hrs	250/hr	\$975.00	0
08/08/16	PRB	Continue summary judgment work drafting arguments outlining the deficiencies in the administrative record	3.20 hrs	250/hr	\$800.00	0
08/08/16	PRB	Analyze administrative record	4.20 hrs	250/hr	\$1,050.00	0
08/08/16	KHOD	Meeting with PRB re: response to motion for summary judgment, reply in support of motion to compel, 56(d) motion, and motion for continuance; discuss next steps in research and writing briefing	0.90 hrs	190/hr	\$171.00	0
08/09/16	KHOD	Review and analyze PRB's notes and research on motion for summary judgment; review and analyze background correspondence, pleadings, administrative record, and exhibits in preparation for summary judgment briefing; review and analyze Rule 56(d) motion and ITW's response to motion; meet with PRB re: draft of reply brief in support of motion to compel and letter to court re: extension	7.40 hrs	190/hr	\$1,406.00	0
08/10/16	PRB	Continue work draft summary judgment facts; contact deputy clerk to discuss how to address response timing	4.20 hrs	250/hr	\$1,050.00	0
08/10/16	KHOD	Determine procedures for contacting Judge Thrash's chambers; review scheduling order; review and analyze order on motion to compel; discuss hearing on motion to compel with TRJ; review and analyze correspondence to RLA re: status of response filings; review and analyze transcripts of deposition and hearing on motion to compel; strategize reply to Plaintiff's response to Motion to Compel and discuss same with PRB	4.40 hrs	190/hr	\$836.00	0
08/10/16	TRJ	Discuss prior discovery disputes with KHOD	0.20 hrs	210/hr	\$42.00	0
08/11/16	KHOD	Continue review and analysis of deposition of Elliot Goldman; prepare outline of response in support of motion to compel production of documents and Rule 56(d) motion and correspond with PRB re: same; review cases cited by Defendant and related research in support of opposition to motion to compel; review and analyze order denying motion to compel and correspond with PRB re: same and deadlines	4.80 hrs	190/hr	\$912.00	0

08/12/16	PRB	Review order denying motion to compel and confer with Mr. Boysen	0.40 hrs	250/hr	\$100.00	0
08/18/16	KHOD	Discuss outstanding research tasks with PRB	0.20 hrs	190/hr	\$38.00	0
08/19/16	PRB	Review communications about errata sheet	0.30 hrs	250/hr	\$75.00	0
09/12/16	TRJ	Review file and notes for plaintiff's demand history; email PRB re: same	0.30 hrs	210/hr	\$63.00	0
09/19/16	PRB	Confer with DMD and KHOD about summary judgment response	1.70 hrs	250/hr	\$425.00	0
09/19/16	PRB	Begin work on response to Defendants' summary judgment motion	3.30 hrs	250/hr	\$825.00	0
09/19/16	KHOD	Prepare outline of MSJ response and confer with PRB and DDEN re: research and draft of MSJ response; prepare action item list and correspond with PRB and DDEN re: same; research additional case law in support of MSJ	5.40 hrs	190/hr	\$1,026.00	0
09/19/16	DDEN	Met with attorneys to learn about case	1.00 hrs	190/hr	\$190.00	0
09/19/16	DDEN	Read administrative record, motion to compel. And the responses of both sides (probably write off)	6.50 hrs	190/hr	\$1,235.00	0
09/20/16	RLA	Telephone conference with PRB re reply status	0.20 hrs	490/hr	\$98.00	0
09/20/16	PRB	Begin work drafting responses to Defendants' statement of undisputed facts	3.30 hrs	250/hr	\$825.00	0
09/20/16	KHOD	Confer with DDEN re: statement of undisputed material facts	0.30 hrs	190/hr	\$57.00	0
09/20/16	KHOD	Prepare brief in opposition to ITW's MSJ	0.70 hrs	190/hr	\$133.00	0
09/20/16	DDEN	Writing and research for the Additional Answers in the Response to the Defendant's motion for summary judgment	2.70 hrs	190/hr	\$513.00	0
09/20/16	DDEN	General Study for case; reviewed the request and responses	4.00 hrs	190/hr	\$760.00	0
09/21/16	RLA	Letter from PRB; letter from client	0.20 hrs	490/hr	\$98.00	0
09/21/16	PRB	Continue work drafting response to summary judgment; confer with client about items for declaration	5.90 hrs	250/hr	\$1,475.00	0
09/21/16	KHOD	Continue preparing brief in opposition to ITW's MSJ; correspond with DDES re: factual background; discuss structure of opposition and outstanding research with PRB; research additional supporting case law	9.80 hrs	190/hr	\$1,862.00	0
09/21/16	DDEN	Drafting Additional Facts for Response to Motion for Summary Judgment	6.80 hrs	190/hr	\$1,292.00	0
09/22/16	RLA	Letter from PRB; start draft brief opposing summary	1.60 hrs	490/hr	\$784.00	0

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09/22/16	PRB	Continue work drafting responses to Defendants' statement of undisputed facts	1.70 hrs	250/hr	\$425.00	0
09/22/16	PRB	Draft declaration for Mr. Boysen; revise materials to incorporate items from declaration	4.20 hrs	250/hr	\$1,050.00	0
09/22/16	KHOD	Continue preparing opposition to ITW's MSJ	7.80 hrs	190/hr	\$1,482.00	0
09/22/16	KHOD	Revise brief in opposition to ITW's MSJ	1.50 hrs	190/hr	\$285.00	0
09/22/16	KHOD	Consult with DDEN and PRB re: outstanding tasks for MSJ, including filing deposition, additional research, revisions to brief, and drafting of cross motion for summary judgment	0.30 hrs	190/hr	\$57.00	0
09/22/16	DDEN	Research for Adverse Inference argument because of Defendants failure to produce documents	2.20 hrs	190/hr	\$418.00	0
09/22/16	DDEN	Draft and Edit Additional Facts	4.30 hrs	190/hr	\$817.00	0
09/23/16	JCM	Telephone conference with KHOD re: filing of depositions	0.20 hrs	360/hr	\$72.00	0
09/23/16	RLA	Review and comment on draft; brief opposing Defendant's summary judgment motion; letter from and letter to PRB; letters from, letters to, telephone conference with KLH	1.90 hrs	490/hr	\$931.00	0
09/23/16	PRB	Confer with opposing counsel about page extension for response brief; review consent motion and supervise filing; confer with KHOD about filing deposition	1.10 hrs	250/hr	\$275.00	0
09/23/16	PRB	Revise declaration and send to Mr. Boysen	2.20 hrs	250/hr	\$550.00	0
09/23/16	PRB	Review adverse inference research and confer with KHOD and DMD	0.80 hrs	250/hr	\$200.00	0
09/23/16	KHOD	Prepare consent motion for extension of page limitation of opposition brief and correspond with PRB and RLA re: same; revise motion to incorporate extension of deadline for reply brief for Defendants and correspond with PRB re: same	1.20 hrs	190/hr	\$228.00	0
09/23/16	KHOD	Research and determine procedural requirements for submission of deposition transcript to court and prepare notice of filing of original transcript; correspond with PRB, support staff, court clerk, and court reporter re: obtaining original transcript	2.40 hrs	190/hr	\$456.00	0
09/23/16	KHOD	Conduct additional research on case law in pension and/or separation pay context for opposition to MSJ	1.20 hrs	190/hr	\$228.00	0
09/23/16	KHOD	Confer with DDEN and RLA re: revisions to brief and additional research	0.50 hrs	190/hr	\$95.00	0
09/23/16	KHOD	Revise brief in opposition to ITW's MSJ to incorporate RLA's comments and additional	2.80 hrs	190/hr	\$532.00	0

		research; confer with DDEN re: case law on adverse inference and incorporation of argument into brief				
09/23/16	DDEN	Research on employer's conflict on interest as the plan administrator	5.00 hrs	190/hr	\$950.00	0
09/23/16	TRJ	Discuss discovery issues and review file re: same	0.40 hrs	210/hr	\$84.00	0
09/23/16	SKB	Scan original deposition transcript for filing, print documents for RLA review	0.50 hrs	190/hr	\$95.00	0
09/24/16	RLA	Review and comment on draft declaration of David Boysen; letter to PRB and K. Hodges re same	1.20 hrs	490/hr	\$588.00	0
09/24/16	PRB	Draft fact section for response brief; finish draft responses to Defendants' statement of undisputed facts	0.80 hrs	250/hr	\$200.00	0
09/24/16	KHOD	Review correspondence with PRB re: revisions to response to MSJ	0.50 hrs	190/hr	\$95.00	0
09/25/16	RLA	Review and comment on draft reply to ITW's statement of uncontested material facts; letter from PRB and K. Hodges	1.80 hrs	490/hr	\$882.00	0
09/25/16	PRB	Begin work drafting statement of additional material facts; review comments from Mr. Boysen on declaration and revise accordingly	6.30 hrs	250/hr	\$1,575.00	0
09/25/16	KHOD	Correspond with PRB re: revisions to statement of undisputed material facts iso MSJ	0.20 hrs	190/hr	\$38.00	0
09/25/16	DDEN	Input citations to the Boysen Declaration	2.50 hrs	190/hr	\$475.00	0
09/26/16	RLA	Letter from PRB/client	0.20 hrs	490/hr	\$98.00	0
09/26/16	RLA	Review and comment on Boysen declaration; letter to and telephone conference with Boysen and PRB; letter to, telephone conference and conference with KLH	1.90 hrs	490/hr	\$931.00	0
09/26/16	PRB	Revise response brief; revise response to Defendants' statement of undisputed facts; revise statement of additional facts; revise declaration; revise cross-motion for summary judgment and notice of filing deposition; supervise filings and exhibits	12.70 hrs	250/hr	\$3,175.00	0
09/26/16	KHOD	Correspond with PRB re: revisions to MSJ and other outstanding tasks re: filing MSJ	0.10 hrs	190/hr	\$19.00	0
09/26/16	KHOD	Confer with PRB and DDEN re: additional revisions to brief, statement of undisputed material facts, boysen declaration, and additional research	0.80 hrs	190/hr	\$152.00	0
09/26/16	KHOD	Revise Response to Statement of Undisputed Facts to incorporate comments from RLA and PRB	1.60 hrs	190/hr	\$304.00	0
09/26/16	KHOD	Conduct additional research on adverse inference case law in support of MSJ response	3.00 hrs	190/hr	\$570.00	0

09/26/16	KHOD	Revise Boysen's declaration to incorporate client's comments amd correspond with client, PRB, and RLA re: same	1.60 hrs	190/hr	\$304.00	0
09/26/16	KHOD	Revise brief in response to ITW's MSJ and check case citations to ensure all are good law and revise notice of filing of original transcript and correspond with SKB re: same	2.20 hrs	190/hr	\$418.00	0
09/26/16	KHOD	Finalize and prepare all documents in response to MSJ for filing; file all documents in support of MSJ	2.30 hrs	190/hr	\$437.00	0
09/26/16	KHOD	Prepare motion for leave to file under seal and proposed order	1.70 hrs	190/hr	\$323.00	0
09/26/16	DDEN	Edited Citations in Brief to correspond with declaration	3.50 hrs	190/hr	\$665.00	0
09/26/16	DDEN	Wrote additional facts statement sections	1.50 hrs	190/hr	\$285.00	0
09/26/16	DDEN	Reviewed Boysen Documents for deficiencies	1.00 hrs	190/hr	\$190.00	0
09/27/16	PRB	Supervise filing of deposition exhibits under seal	0.30 hrs	250/hr	\$75.00	0
09/27/16	KHOD	Correspond and coordinate with SKB, PRB, WJT and AJW re: filing exhibits to Goldman depo under seal	0.70 hrs	190/hr	\$133.00	0
09/27/16	KHOD	Correspond with client re: final filings re: motion for summary judgment	0.20 hrs	190/hr	\$38.00	0
09/27/16	DDEN	Reviewed deposition transcript for additional facts, edited the brief factual sections	4.00 hrs	190/hr	\$760.00	0
09/27/16	SKB	Prepare Goldman deposition transcript and exhibits for filing; e-mails to KLH and PRB re same	0.50 hrs	190/hr	\$95.00	0
10/03/16	PRB	Confer with opposing counsel and RLA about summary-judgment filings	0.80 hrs	250/hr	\$200.00	0
10/03/16	KHOD	Confer with SKB re: deadline to respond to motion to strike cross MSJ and confer with PRB re: research for response to motion to strike cross MSJ	0.30 hrs	190/hr	\$57.00	0
10/04/16	KHOD	Review and analyze ITW's objection and motion to strike Cross Motion for Summary Judgment	0.70 hrs	190/hr	\$133.00	0
10/04/16	KHOD	Research case law for opposition to motion to strike cross motion for summary judgment and correspond with PRB re: same	2.80 hrs	190/hr	\$532.00	0
10/04/16	SKB	Review case filings, update event dates in prolaw	0.20 hrs	190/hr	\$38.00	0
10/06/16	PRB	Review defendants' draft motion regarding its objection to Boysen's cross-motion for summary judgment; revise motion and send to opposing counsel with comments	0.70 hrs	250/hr	\$175.00	0
10/07/16	PRB	Boysen. Continue discussions with opposing counsel	0.40 hrs	250/hr	\$100.00	0



				on their objections to Boysen's cross-motion				
		10/07/16	KHOD	Review consent motions re: cross-motion for summary judgment and extension of time for reply brief	0.20 hrs	190/hr	\$38.00	0
L140	A103	10/12/16	ACAM	Review order granting Plaintiff's withdrawal of motion for summary judgment and update event dates in Prolaw	0.20 hrs	190/hr	\$38.00	0
L140	A103	10/12/16	ACAM	Review order granting Defendant's extension to file reply in support of its motion for summary judgment and update event dates in Prolaw	0.20 hrs	190/hr	\$38.00	0
		11/10/16	PRB	Confer with RLA and review cases for potential inclusion in any sur-reply	2.10 hrs	250/hr	\$525.00	0
		11/11/16	PRB	Confer with opposing counsel about request for page extension in reply brief	1.10 hrs	250/hr	\$275.00	0
		11/14/16	RLA	Letters from with letters to client; initial scan of ITW filings	0.60 hrs	490/hr	\$294.00	0
		11/14/16	PRB	Begin work analyzing Defendants' reply brief	2.90 hrs	250/hr	\$725.00	0
		11/15/16	RLA	Letters from and letters to PRB; letters to and letters from client; start ITW pleadings review	0.80 hrs	490/hr	\$392.00	0
		11/15/16	PRB	Continue work analyzing Defendants' reply brief; research case law and confer with RLA about potential arguments for sur-reply	3.70 hrs	250/hr	\$925.00	0
		11/15/16	KHOD	Review and analyze Plan's reply to Boysen's summary judgment response and statement of facts	0.70 hrs	190/hr	\$133.00	0
		11/16/16	RLA	Letters from client	0.30 hrs	490/hr	\$147.00	0
		11/16/16	PRB	Continue research of case law cited by Defendants in their reply brief	3.10 hrs	250/hr	\$775.00	0
		11/21/16	PRB	Finish research for sur-reply; draft sur-reply brief and motion for permission to file; revise and supervise filing	8.20 hrs	250/hr	\$2,050.00	0
		11/22/16	RLA	Letters from client; review court order	0.20 hrs	490/hr	\$98.00	0
		11/28/16	RLA	Conference with PRB	0.20 hrs	490/hr	\$98.00	0
		11/28/16	PRB	Review court order granting permission to file sur-reply and consider potential additional arguments to include in brief	2.20 hrs	250/hr	\$550.00	0
		11/29/16	PRB	Update research to determine whether to add new legal authority to sur-reply	3.10 hrs	250/hr	\$775.00	0
		11/30/16	PRB	Revise sur-reply	0.90 hrs	250/hr	\$225.00	0
		12/02/16	RLA	Telephone conference with PRB; review and comment on sur-reply brief draft; letters to and letters from client	0.80 hrs	490/hr	\$392.00	0

		12/02/16	PRB	Boysen. Revise sur-reply and confer with Mr. Boysen; supervise filing	1.30 hrs	250/hr	\$325.00	0
L140	A103	12/06/16	ACAM	Review Plaintiff's motion to file a sur-reply in response to Defendants' motion for summary judgment and update event dates in Prolaw	0.20 hrs	190/hr	\$38.00	0
		01/05/17	PRB	Review summary judgment order, research grounds for award of fees, and confer with RLA	2.90 hrs	250/hr	\$725.00	0
		01/11/17	PRB	Analyze options for appeal	0.60 hrs	250/hr	\$150.00	0
		01/13/17	RLA	Review Paul Barsness analysis of Court Order	0.30 hrs	490/hr	\$147.00	0
		01/13/17	PRB	Confer with RLA about appeal options; call deputy clerk to inquire about attorney fee award in judgment	0.60 hrs	250/hr	\$150.00	0
		01/13/17	SKB	Review case filings, update event dates on calendar	0.20 hrs	190/hr	\$38.00	0
		01/17/17	RLA	Conference with Paul Barsness; letter from Paul Barsness with draft reply to ITW for review regarding scheduling Defendants' filing of "emergency motion"	0.40 hrs	490/hr	\$196.00	0
		01/17/17	PRB	Confer with opposing counsel about fee petition and bill of costs; confer with RLA	0.80 hrs	250/hr	\$200.00	0
		01/17/17	PRB	Identify legal authority to cite in motion for reconsideration	0.90 hrs	250/hr	\$225.00	0
		01/18/17	RLA	Review Defendants' "emergency motion" and Paul Barsness' draft response; edit same and get filed in final; letters to and from Boysen; conference with Paul Barsness; telephone conference with Boysen	0.90 hrs	490/hr	\$441.00	0
		01/18/17	PRB	Analyze Defendants' emergency motion	1.50 hrs	250/hr	\$375.00	0
		01/18/17	PRB	Draft response to emergency motion	2.20 hrs	250/hr	\$550.00	0
		01/18/17	PRB	Revise and supervise filing of response to emergency motion	1.30 hrs	250/hr	\$325.00	0
		01/19/17	RLA	Review ITW's latest filing; letter from Paul Barsness regarding draft reply to S. Neba call	0.40 hrs	490/hr	\$196.00	0
		01/19/17	PRB	Analyze reply brief in support of emergency motion	0.40 hrs	250/hr	\$100.00	0
		01/20/17	RLA	Letters to and from client and Paul Barsness	0.60 hrs	490/hr	\$294.00	0
		01/20/17	PRB	Analyze motion for attorneys' fees	1.20 hrs	250/hr	\$300.00	0
		01/23/17	RLA	Letter from client regarding errors in court order	0.30 hrs	490/hr	\$147.00	0
		01/23/17	PRB	Begin work on response to motion for attorneys' fees; analyze Defendants' case law	2.90 hrs	250/hr	\$725.00	0
		01/23/17	DDEN	Research on attorneys' fees	1.10 hrs	190/hr	\$209.00	0
		01/23/17	SKB	Review case filings, update event calendar, e-mails	0.20 hrs	190/hr	\$38.00	0

with PRB re same

01/24/17	RLA	Telephone conference with Paul Barsness	0.10 hrs	490/hr	\$49.00	0
01/25/17	RLA	Review court Order denying Defendants' "emergency" motion	0.10 hrs	490/hr	\$49.00	0
01/26/17	PRB	Research ERISA decisions denying fee-shifting against plan beneficiaries	3.30 hrs	250/hr	\$825.00	0
01/26/17	DDEN	Research on attorneys' fees	0.40 hrs	190/hr	\$76.00	0
01/30/17	RLA	Letter from client	0.10 hrs	490/hr	\$49.00	0
01/30/17	PRB	Research applicable Rule 59 and 60 cases to include in motion to alter or amend the judgment	2.90 hrs	250/hr	\$725.00	0
01/30/17	PRB	Begin work drafting response brief on fees; draft sections on the appropriate standard when fees are sought against ERISA plaintiffs, and the level of culpability needed to warrant fees	3.10 hrs	250/hr	\$775.00	0
01/30/17	PRB	Draft argument sections addressing the ability to pay and deterrence factors	2.50 hrs	250/hr	\$625.00	0
01/30/17	DDEN	Continue research regarding attorneys' fees	1.40 hrs	190/hr	\$266.00	0
01/31/17	RLA	Letter from Paul Barsness	0.20 hrs	490/hr	\$98.00	0
01/31/17	PRB	Draft fact section and summary of discovery disputes	2.80 hrs	250/hr	\$700.00	0
01/31/17	PRB	Draft declarations and revise fact section of response brief	2.70 hrs	250/hr	\$675.00	0
01/31/17	PRB	Draft arguments addressing the final two factors, and Defendants' argument that fees can be shifted to opposing counsel	3.20 hrs	250/hr	\$800.00	0
01/31/17	PRB	Begin work drafting motion to alter/amend the judgment	3.10 hrs	250/hr	\$775.00	0
01/31/17	DDEN	Research attorneys fees and drafting	6.80 hrs	190/hr	\$1,292.00	0
02/01/17	RLA	Review and edit draft brief opposing fees; review and edit draft declarations; conference with Paul Barsness; telephone conference with Paul Barsness; review and edit draft motion	0.80 hrs	490/hr	\$392.00	0
02/01/17	PRB	Finish drafting motion to alter or amend judgment and reconsider summary judgment	3.80 hrs	250/hr	\$950.00	0
02/01/17	PRB	Finalize declarations and update briefs accordingly	1.90 hrs	250/hr	\$475.00	0
02/01/17	PRB	Revise response brief	2.10 hrs	250/hr	\$525.00	0
02/01/17	DDEN	Continue research regarding attorneys fees; research regarding admissible evidence	3.60 hrs	190/hr	\$684.00	0
02/02/17	PRB	Final review and revisions to, and supervise filing of, motion to alter or amend judgment and reconsider	2.20 hrs	250/hr	\$550.00	0

summary judgment

02/02/17	PRB	Final review and revisions to, and supervise filing of, response to Defendants' motion for attorneys' fees	2.80 hrs	250/hr	\$700.00	0
02/06/17	RLA	Defendant's bill of costs; telephone conference and meeting with Paul Barsness	0.20 hrs	490/hr	\$98.00	0
02/06/17	PRB	Confer with Mr. Boysen about next steps	0.20 hrs	250/hr	\$50.00	0
02/07/17	PRB	Review bill of costs and confer with RLA	0.60 hrs	250/hr	\$150.00	0
02/17/17	RLA	Review Defendants' briefs and comment on same to Paul Barsness	0.80 hrs	490/hr	\$392.00	0
02/19/17	RLA	Letter from Paul Barsness; letter from client	0.20 hrs	490/hr	\$98.00	0
02/20/17	RLA	Conference with Marbury Rainer	0.30 hrs	490/hr	\$147.00	0
02/20/17	PRB	Analyze Defendants' reply brief and response to motion to alter/amend judgment	2.90 hrs	250/hr	\$725.00	0
02/22/17	PRB	Meeting with JMR and RLA to discuss Defendants' new argument that the firm should be responsible for fees	0.40 hrs	250/hr	\$100.00	0
02/23/17	RLA	Review court notice	0.10 hrs	490/hr	\$49.00	0
02/27/17	PRB	Begin work reviewing Defendants' cases in order to draft reply brief	0.50 hrs	250/hr	\$125.00	0
02/27/17	PRB	Continue work analyzing Defendants' cases and outlining arguments for reply	3.70 hrs	250/hr	\$925.00	0
02/28/17	RLA	Review and comment on Paul Barsness's draft brief; conference with Paul Barsness regarding same	0.40 hrs	490/hr	\$196.00	0
03/01/17	RLA	Letter from client; letter from Paul Barsness; telephone conference and conference with Paul Barsness	0.60 hrs	490/hr	\$294.00	0
03/01/17	PRB	Revise reply brief, and confer with Mr. Boysen about next steps	1.30 hrs	250/hr	\$325.00	0
03/01/17	MCLI	Calendar/Docketing of Deadline for Review of Taxation of Costs	0.10 hrs	210/hr	\$21.00	0
03/02/17	PRB	Begin work on motion asking Court to review taxation of costs and attorney fee itemization	2.10 hrs	250/hr	\$525.00	0
03/06/17	PRB	Continue review of fee itemization for response brief	3.70 hrs	250/hr	\$925.00	0
03/07/17	PRB	Finalize motion for review of bill of costs; supervise filing	1.30 hrs	250/hr	\$325.00	0
03/22/17	RLA	Telephone conference with and letters to and from Paul Barsness regarding ITW filing	0.30 hrs	490/hr	\$147.00	0
03/22/17	PRB	Analyze Defendants' response brief on bill of costs and assess whether to file sur-reply	0.40 hrs	250/hr	\$100.00	0

		03/23/17	PRB	Prepare for and participate in call with insurance counsel	0.70 hrs	250/hr	\$175.00	0
		03/24/17	RLA	Review Defendants' latest filing regarding Bill of Costs	0.60 hrs	490/hr	\$294.00	0
		03/27/17	RLA	Letters to and from client	0.20 hrs	490/hr	\$98.00	0
		04/11/17	RLA	Review court notice; letter to client regarding notice	0.20 hrs	490/hr	\$98.00	0
		04/19/17	PRB	Review order on taxed costs and confer with Mr. Boysen and RLA	0.40 hrs	250/hr	\$100.00	0
		06/01/17	PRB	Review court order denying request for fees and confer with JMR	0.40 hrs	250/hr	\$100.00	0
L120	A102	07/05/17	EBAD	Conference with PRB. Research Eleventh Circuit case law regarding whether a remand for further proceedings to the ERISA administrative process is sufficient to support a motion for attorney's fees under the ERISA fee-shifting provision of 29 U.S.C. § 1132(g)(1).	6.30 hrs	130/hr	\$819.00	0
L120	A102	07/06/17	EBAD	Research case law from all federal courts regarding ERISA fee-shifting provision of 29 U.S.C. § 1132(g)(1) and whether fees can be awarded when an ERISA case is remanded back to the ERISA administrative proceedings. Draft informal memo summarizing findings.	4.10 hrs	130/hr	\$533.00	0
		07/06/17	MCLI	Conference with PRB re: completion of Transcript Order Information Form for filing with court; research and telephone call to Judge Thrash's chambers to arrange for prepayment of transcript fees; work to complete Transcript Order Information form	0.70 hrs	210/hr	\$147.00	0
L120	A102	07/07/17	EBAD	Research case law from all federal courts regarding ERISA fee-shifting provision of 29 U.S.C. § 1132(g)(1) and whether fees can be awarded when an ERISA case is remanded back to the ERISA administrative proceedings. Draft informal memo summarizing findings.	4.20 hrs	130/hr	\$546.00	0
		07/10/17	JAW	Review district court pleadings in preparation of filing Civil Appeal Statement with the 11th Circuit Court of Appeals	1.60 hrs	325/hr	\$520.00	0
		07/10/17	MLLA	Discuss with PBR regarding research on duty of an ERISA Administrator to reseach and investigate claim	0.50 hrs	130/hr	\$65.00	0
		07/10/17	MLLA	Research duty of an ERISA Administrator to reseach and investigate claim	4.00 hrs	130/hr	\$520.00	0
		07/11/17	JAW	Further review of district court pleadings in preparation of filing Civil Appeal Statement with the 11th Circuit Court of Appeals; draft the issues proposed to be raised on appeal for the Civil Appeal	1.20 hrs	325/hr	\$390.00	0

		Statement				
	07/11/17 MLLA	Research duty of an ERISA Administrator to reseach and investigate claim	3.80 hrs	130/hr	\$494.00	0
	07/11/17 MLLA	Discuss findings with PBR	0.20 hrs	130/hr	\$26.00	0
	07/11/17 MLLA	Research duty of an ERISA Administrator to reseach and investigate claim	2.50 hrs	130/hr	\$325.00	0
	07/12/17 JAW	Draft Civil Appeal Statement	0.50 hrs	325/hr	\$162.50	0
	07/12/17 MLLA	Discuss findings with PBR	0.60 hrs	130/hr	\$78.00	0
	07/12/17 MLLA	Research requirements for civil appeal statement at 11th circuit	0.50 hrs	130/hr	\$65.00	0
	07/12/17 MLLA	Research duty of an ERISA Administrator to reseach and investigate claim	3.30 hrs	130/hr	\$429.00	0
	07/13/17 JAW	Prepare Civil Appeal Statement and Appendix; prepare appearance of counsel forms; review 11th Circuit rules re: civil appeal statement and which documents to attach to such statement; review case law re: issue of what it mean to "submit" documents to plan administrator to determine if there is an issue of first impression	1.90 hrs	325/hr	\$617.50	0
	07/13/17 MLLA	Research additional cases on plan administrator duty to investigate claim	2.40 hrs	130/hr	\$312.00	0
	07/14/17 MLLA	Draft outline of arguments	2.30 hrs	130/hr	\$299.00	0
33	07/17/17 EBAD	Conference with PRB, review file, and conduct research for appeal to the 11th Circuit regarding the potential for discovery beyond the administrative record in an ERISA case.	6.30 hrs	130/hr	\$819.00	0
	07/17/17 MLLA	Revise draft outline of arguments	1.50 hrs	130/hr	\$195.00	0
31	07/18/17 EBAD	Draft informal memo for PRB with results of legal research on the potential for discovery beyond the administrative record in an ERISA case.	2.60 hrs	130/hr	\$338.00	0
TOTAL PROFESSIONAL FEES:			776.90 hrs		\$206,385.00	

**BILLING SUMMARY**

Current Total Fees: 776.90 hrs \$206,385.00  
 Current Total Expenses: \$0.00

**CURRENT AMOUNT DUE:** **\$206,385.00**

PAYMENTS APPLIED THROUGH 7/22/2016 (\$0.00)

Less Adjustments Applied (\$0.00)



**TOTAL AMOUNT NOW DUE****\$206,385.00****WORKED TIMEKEEPER RECAP**

WJH	Holley, William J.	1.40 hrs	595.00	\$833.00
TLH	Treadwell, Trishanda L	2.30 hrs	430.00	\$989.00
JXM	Miller, Jared C.	0.20 hrs	360.00	\$72.00
JDG	Gordon, Jeffrey D.	1.20 hrs	350.00	\$420.00
RLA	Ashe, R. Lawrence	135.10 hrs	490.00	\$66,199.00
PRB	Barsness, Paul R.	255.20 hrs	250.00	\$63,800.00
KCAR	Hodges, Katrina L	71.20 hrs	190.00	\$13,528.00
TJOH	Johnson, Tiffany R	174.40 hrs	210.00	\$36,624.00
EBAD	Badia, Erik J.	23.50 hrs	130.00	\$3,055.00
DDEN	Dennis, Desmond M.	58.30 hrs	190.00	\$11,077.00
JDA	Wood, Julie A.	5.20 hrs	325.00	\$1,690.00
SKB	Burdette, Shay K	6.90 hrs	190.00	\$1,311.00
ACAM	Cameron, Anita	9.10 hrs	188.02	\$1,711.00
MCLI	Cline, Mark	11.30 hrs	200.71	\$2,268.00
MLLA	Llamas, Marvyn S	21.60 hrs	130.00	\$2,808.00

# EXHIBIT 3

**Parker, Hudson, Rainer & Dobbs LLP**

A LIMITED LIABILITY PARTNERSHIP

**ATTORNEYS AT LAW****303 PEACHTREE STREET, N.E.****SUITE 3600****ATLANTA, GA 30308****(404) 523-5300**

EIN: 58-1423485

David Boysen  
 13411 Bradshaw Street  
 Apt. 32104  
 Overland Park, KS 66213

Invoice Date: 05/31/2019 RLA

**Prebill # 306237****Client # 005820****Matter # 00002****Invoice No.: 0**

ATTN:

**Re: Re: Appeal**  
**(005820/00002C) Bill Expenses**

**FOR PROFESSIONAL SERVICES RENDERED THROUGH: May 31, 2019**

06/26/17	RLA	Letter to and telephone conference with client; conference with Paul Barsness	0.50 hrs	490/hr	\$245.00	0
06/26/17	PRB	Confer with RLA about appeal	0.50 hrs	300/hr	\$150.00	0
06/26/17	PRB	Call with Boysen to discuss pros and cons of appeal	0.40 hrs	300/hr	\$120.00	0
06/27/17	RLA	Letters to and from client	0.60 hrs	490/hr	\$294.00	0
06/28/17	RLA	Telephone conference with client; conference with and telephone conference with Paul Barsness; letter to ITW counsel	0.40 hrs	490/hr	\$196.00	0
06/28/17	PRB	Confer with RTC and RLA about potential appeal	0.50 hrs	300/hr	\$150.00	0
06/29/17	RLA	Telephone conference with Paul Barsness; Notice of Appeal filed	0.30 hrs	490/hr	\$147.00	0
06/29/17	PRB	Draft and supervise filling of Notice of Appeal	0.50 hrs	300/hr	\$150.00	0
06/30/17	RLA	Letter to and from client	0.10 hrs	490/hr	\$49.00	0
06/30/17	MCLI	Docket managment regarding appeal with emails to PRB regarding same	0.30 hrs	210/hr	\$63.00	0
07/06/17	PRB	Discuss updated fee research with EBAD	0.50 hrs	300/hr	\$150.00	0
07/06/17	PRB	Supervise compliance with appeal docketing requirements	2.30 hrs	300/hr	\$690.00	0
07/07/17	MCLI	Work to prepare Eleventh Circuit Transcript Information Form	0.70 hrs	210/hr	\$147.00	0

07/10/17	PRB	Continue work supervising compliance with compiling the record for appeal	1.00 hrs	300/hr	\$300.00	0
07/10/17	PRB	Confer with JAW about arguments for appellate brief	0.50 hrs	300/hr	\$150.00	0
07/10/17	PRB	Confer with MLLA about updating research for appellate brief	0.50 hrs	300/hr	\$150.00	0
07/11/17	RLA	Letter from Mark Cline	0.10 hrs	490/hr	\$49.00	0
07/11/17	PRB	Supervise transcript requests	0.20 hrs	300/hr	\$60.00	0
07/11/17	PRB	Confer with MLLA about status of research	0.30 hrs	300/hr	\$90.00	0
07/11/17	MCLI	Emails and calls with court reporter for execution/completion of transcript order forms for filing with court of appeals; preparation of forms	0.40 hrs	210/hr	\$84.00	0
07/12/17	RLA	Letters to and from client	0.20 hrs	490/hr	\$98.00	0
07/12/17	PRB	Review recommendations for civil appeal sheet, and confer with JAW and MLLA	0.70 hrs	300/hr	\$210.00	0
07/12/17	PRB	Revise Civil Appeal Statement and confer with JAW	1.20 hrs	300/hr	\$360.00	0
07/12/17	PRB	Analyze updated research on requirements for a full and fair review under ERISA	2.20 hrs	300/hr	\$660.00	0
07/12/17	PRB	Review cross appeal and confer with RLA	0.30 hrs	300/hr	\$90.00	0
07/13/17	PRB	Confer with JAW about revisions to the Civil Appeal Statement	0.50 hrs	300/hr	\$150.00	0
07/13/17	PRB	Supervise submission of record information for appeal and confer with BUZO and MCLI about docketing status	0.40 hrs	300/hr	\$120.00	0
07/13/17	MCLI	Emails with Susan Baker of US Dist Court re: filing of Transcript Order form for her execution and filing with the Court of Appeals as well as District Court's failure to transfer file on June 29	0.20 hrs	210/hr	\$42.00	0
07/13/17	MCLI	Assist PRB and JAW with filing of Transcript Order Form and supporting documents	0.20 hrs	210/hr	\$42.00	0
07/13/17	MCLI	Emails with PRB re: timeliness of cross Appeal; research same	0.90 hrs	210/hr	\$189.00	0
07/14/17	RLA	Review court notice	0.10 hrs	490/hr	\$49.00	0
07/14/17	PRB	Analyze research regarding whether the issues on appeal are a matter of first impression and draft updated language for Civil Appeal Statement	1.80 hrs	300/hr	\$540.00	0
07/17/17	PRB	Supervise filings required for notice of appearance	0.20 hrs	300/hr	\$60.00	0
07/18/17	RLA	Review court notices	0.10 hrs	490/hr	\$49.00	0

07/18/17	PRB	Analyze research regarding discovery issue	1.20 hrs	300/hr	\$360.00	0
07/24/17	PRB	Supervise filing of Certificate of Interested Persons	0.30 hrs	300/hr	\$90.00	0
07/26/17	MCLI	Calculate and docket response dates pursuant to Court's Notice of Docketing; emails with PRB re: same	0.60 hrs	210/hr	\$126.00	0
07/27/17	JGUN	Prepare Civil Appeal Statement	1.00 hrs	265/hr	\$265.00	0
07/27/17	RLA	Notices from 11th Circuit Court of Appeals	0.20 hrs	490/hr	\$98.00	0
07/27/17	MCLI	Assist with filings of Entry of Appearance and Civil Appeals Statement	0.40 hrs	210/hr	\$84.00	0
07/28/17	RLA	Letter from and telephone conference with 11th Circuit regarding briefing schedule; telephone conference with 11th Circuit regarding extension for brief; letter from 11th Circuit granting extension for brief until September 5, 2017	0.70 hrs	490/hr	\$343.00	0
07/28/17	PRB	Confer with RLA and JAW about appellate filings	0.30 hrs	300/hr	\$90.00	0
08/08/17	RLA	Review Mediation notice	0.10 hrs	490/hr	\$49.00	0
08/11/17	JAW	Review pleadings from district court re: full and fair review legal arguments	1.40 hrs	325/hr	\$455.00	0
08/11/17	PRB	Discuss potential appellate arguments with JAW	0.60 hrs	300/hr	\$180.00	0
08/14/17	JAW	Review district court pleadings re: discovery motions and orders of the district court	0.90 hrs	325/hr	\$292.50	0
08/14/17	RLA	Letters from PRB and client	0.10 hrs	490/hr	\$49.00	0
08/14/17	PRB	Review mediation information and confer with Mr. Boysen, RLA, and JAW	0.40 hrs	300/hr	\$120.00	0
08/16/17	JAW	Review mediation notice and guidelines and 11th Circuit Rules regarding extensions for filing briefs; review pleadings and case law in preparation of drafting mediation statement and appellant brief	4.10 hrs	325/hr	\$1,332.50	0
08/16/17	PRB	Confer with JAW about brief	0.20 hrs	300/hr	\$60.00	0
08/17/17	JAW	Review Mr. Goldman's deposition transcript, review Severance Plan, review documents produced by ITW; draft fact section; telephone KMC re: extension to file brief	4.20 hrs	325/hr	\$1,365.00	0
08/17/17	PRB	Confer with opposing counsel about mediation and extension of briefing schedule	0.20 hrs	300/hr	\$60.00	0
08/18/17	JAW	Draft mediation statement; draft appellant brief	4.40 hrs	325/hr	\$1,430.00	0
08/18/17	RLA	Review and respond to PRB and W. Stockard emails	0.20 hrs	490/hr	\$98.00	0
08/18/17	PRB	Review and revise mediation statement	0.80 hrs	300/hr	\$240.00	0
08/20/17	JAW	Revise mediation statement	1.30 hrs	325/hr	\$422.50	0

08/20/17	RLA	Letters from PRB and David Boysen; letter from W. Stockard	0.20 hrs	490/hr	\$98.00	0
08/21/17	JAW	Draft Appellant Brief	3.80 hrs	325/hr	\$1,235.00	0
08/21/17	RLA	Letters to and from D. Boysen and PRB	0.20 hrs	490/hr	\$98.00	0
08/21/17	PRB	Confer with Mr. Boysen and JAW about mediation	0.50 hrs	300/hr	\$150.00	0
08/22/17	JAW	Draft Appellant Brief	5.80 hrs	325/hr	\$1,885.00	0
08/22/17	RLA	Letters from W. Stockard	0.20 hrs	490/hr	\$98.00	0
08/22/17	PRB	Confer with opposing counsel about mediation and extending deadlines for briefing	0.40 hrs	300/hr	\$120.00	0
08/22/17	PRB	Review and revise Mediation Statement	1.00 hrs	300/hr	\$300.00	0
08/22/17	MCLI	Emails and calls with 11th Circuit regarding need for Motion to review administrative record filed under seal	0.30 hrs	210/hr	\$63.00	0
08/23/17	JAW	Draft Appellant Brief	5.60 hrs	325/hr	\$1,820.00	0
08/23/17	RLA	Mediation scheduling emails	0.40 hrs	490/hr	\$196.00	0
08/23/17	PRB	Confer with Mr. Boysen about mediation and extending deadlines for briefing	0.40 hrs	300/hr	\$120.00	0
08/24/17	PRB	Mediation conferrals with opposing counsel	0.30 hrs	300/hr	\$90.00	0
08/25/17	JAW	Research 29 USC 1133(1) and specific reasons; revise Appellant Brief	1.80 hrs	325/hr	\$585.00	0
08/25/17	RLA	Mediation and briefing scheduling emails	0.30 hrs	490/hr	\$147.00	0
08/25/17	PRB	Mediation conferrals with Mr. Boysen and opposing counsel	0.30 hrs	300/hr	\$90.00	0
08/27/17	JAW	Revise Appellant Brief	1.20 hrs	325/hr	\$390.00	0
08/28/17	JAW	Revise Appellant Brief; draft request for extension to file brief from mediator	0.60 hrs	325/hr	\$195.00	0
08/29/17	PRB	Confer with mediator about extension request	0.30 hrs	300/hr	\$90.00	0
08/29/17	PRB	Submit request for extension of briefing deadlines and confer with opposing counsel	0.50 hrs	300/hr	\$150.00	0
08/30/17	RLA	Scheduling emails	0.40 hrs	490/hr	\$196.00	0
08/30/17	PRB	Confer with mediator and opposing counsel about mediation	0.40 hrs	300/hr	\$120.00	0
08/31/17	RLA	Mediation scheduling emails; letter from 11th Circuit; letter to PRB and counsel for ITW; scheduling emails	0.80 hrs	490/hr	\$392.00	0
08/31/17	PRB	Continued conferrals with opposing counsel and the	0.40 hrs	300/hr	\$120.00	0



		mediator about the mediation and brief extension				
09/01/17	RLA	Review 11th Circuit emails	0.20 hrs	490/hr	\$98.00	0
09/01/17	PRB	Confer with mediator about brief extension	0.30 hrs	300/hr	\$90.00	0
09/01/17	MCLI	Monitor upcoming case schedule and deadlines	0.30 hrs	210/hr	\$63.00	0
09/06/17	RLA	Letters to and from client regarding scheduling	0.30 hrs	490/hr	\$147.00	0
09/06/17	PRB	Confer with Mr. Boysen about mediation	0.20 hrs	300/hr	\$60.00	0
09/07/17	MCLI	Emails and office conferences with PRB re: status of matter and deadline for filing of Brief and Appendix in Support; research regarding same	0.70 hrs	210/hr	\$147.00	0
09/13/17	RLA	Conference with PRB	0.10 hrs	490/hr	\$49.00	0
09/26/17	PRB	Mediation preparation	0.40 hrs	300/hr	\$120.00	0
09/27/17	RLA	Review and comment on JAW/PRB draft mediation statement	0.60 hrs	490/hr	\$294.00	0
09/28/17	JAW	Review mediation statement	0.20 hrs	325/hr	\$65.00	0
09/28/17	RLA	Conference with PRB with further comments on draft mediation statement	0.40 hrs	490/hr	\$196.00	0
09/28/17	PRB	Confer with RLA, review and revise mediation statement, and send to Mr. Boysen	1.10 hrs	300/hr	\$330.00	0
09/28/17	MCLI	Call with clerk re: Cross appeal deadlines; docket response dates accordingly	0.50 hrs	210/hr	\$105.00	0
10/01/17	RLA	(9.5.17) Letters to and from client; letter from PRB	0.30 hrs	490/hr	\$147.00	0
10/02/17	RLA	Review Mediation statement with final edits	0.40 hrs	490/hr	\$196.00	0
10/02/17	PRB	Revise mediation statement and supervise filing with mediator	0.70 hrs	300/hr	\$210.00	0
10/04/17	RLA	Letter from S. Neba regarding ITW attendees at mediation	0.10 hrs	490/hr	\$49.00	0
10/05/17	RLA	Letters to and from client regarding mediation logistics	0.30 hrs	490/hr	\$147.00	0
10/09/17	RLA	Prepare for Mediation	1.60 hrs	490/hr	\$784.00	0
10/09/17	PRB	Mediation preparation	4.20 hrs	300/hr	\$1,260.00	0
10/10/17	RLA	Complete preparation for 11th Circuit Mediation with client and PRB. Participate in Mediation with Cliff Altekruze and ITW counsel, PRB and client, including conference with client and PRB; conference with Mediator, client and PRB; debrief with client and PRB; debrief with client	6.30 hrs	490/hr	\$3,087.00	0
10/10/17	PRB	Draft and send communication to mediator about extending briefing deadline	0.30 hrs	300/hr	\$90.00	0

10/10/17	PRB	Prepare for and participate in mediation	7.00 hrs	300/hr	\$2,100.00	0
10/11/17	RLA	Review Court Order granting extension; conference with Julie Wood	0.10 hrs	490/hr	\$49.00	0
10/11/17	PRB	Confer with JAW about appellate arguments	0.40 hrs	300/hr	\$120.00	0
10/11/17	PRB	Call mediator to discuss briefing deadline; draft and send updated request; confer with JAW about draft brief	0.50 hrs	300/hr	\$150.00	0
10/12/17	JAW	Review draft of brief; research Federal Register regarding the promulgates of Department of Labor rules in 2000 regarding "full and fair review"	0.80 hrs	325/hr	\$260.00	0
10/17/17	PRB	Begin work on Appellate brief	3.70 hrs	300/hr	\$1,110.00	0
10/19/17	JAW	Review comments of draft brief with PRB; revise brief	0.80 hrs	325/hr	\$260.00	0
10/19/17	PRB	Confer with JAW about appellate arguments	1.20 hrs	300/hr	\$360.00	0
10/23/17	JAW	Revise Appellant Brief	5.50 hrs	325/hr	\$1,787.50	0
10/23/17	JAW	Revise Appellant Brief	1.90 hrs	325/hr	\$617.50	0
10/23/17	PRB	Review revised brief and outline proposed changes	2.20 hrs	300/hr	\$660.00	0
10/24/17	RLA	Letter from client	0.20 hrs	490/hr	\$98.00	0
10/24/17	PRB	Revise statement of facts	3.30 hrs	300/hr	\$990.00	0
10/24/17	PRB	Revise argument on the adequacy of the investigation	1.90 hrs	300/hr	\$570.00	0
10/24/17	PRB	Revise argument outlining why the Plan Administrator's determination was de novo wrong	1.10 hrs	300/hr	\$330.00	0
10/25/17	JGUN	Review and analyze Appellant's Brief	1.20 hrs	265/hr	\$318.00	0
10/25/17	RLA	Conference with Justin Gunter regarding draft appellate brief	0.40 hrs	490/hr	\$196.00	0
10/25/17	PRB	Review comments from RLA, finish draft of appellate brief and send to Mr. Boysen	4.90 hrs	300/hr	\$1,470.00	0
10/26/17	JAW	Review administrative record re: evidence of "no job elimination"; review and revise Appellant Brief; research meaning of "job elimination" in ERISA cases	3.80 hrs	325/hr	\$1,235.00	0
10/26/17	JGUN	Conference with PRB re: Appellant's Brief	1.30 hrs	265/hr	\$344.50	0
10/26/17	PRB	Confer with JAW and JGUN about appellate arguments	1.60 hrs	300/hr	\$480.00	0
10/26/17	PRB	Revise fact section of appellate brief	2.70 hrs	300/hr	\$810.00	0
10/26/17	PRB	Revise argument section of appellate brief	4.80 hrs	300/hr	\$1,440.00	0

	10/26/17	MCLI	Begin preparatiioin of Administrative Record index; book marking of administrative record for speed and ease of searching	2.80 hrs	210/hr	\$588.00	0
	10/26/17	MCLI	Conference with JBEN re: preparations for filing of joint appendix and need to index of Administrative Record	0.10 hrs	210/hr	\$21.00	0
	10/27/17	JAW	Draft list of documents to be included in appendix; review Mr. Goldman's deposition regarding discussion of "job elimination"; review documents submitted by Defendants in support of motion for summary judgment (including declaration) re: alleged evidence of no "job elimination"	3.10 hrs	325/hr	\$1,007.50	0
	10/27/17	PRB	Update research on requirements for a full and fair review and revise appellate brief	3.10 hrs	300/hr	\$930.00	0
	10/27/17	PRB	Update research on job elimination and revise appellate brief	2.70 hrs	300/hr	\$810.00	0
	10/30/17	JAW	Review and revise Appellant Brief	1.30 hrs	325/hr	\$422.50	0
	10/30/17	PRB	Final revisions to appellate brief; draft ancillary sections and prepare for filing	7.30 hrs	300/hr	\$2,190.00	0
	10/30/17	MCLI	Assist with finalizing and preparation of Tables of Contents and Tables of Authorities; conference with PRB re: same	0.90 hrs	210/hr	\$189.00	0
	10/31/17	JAW	Revise Appellant Brief	0.40 hrs	325/hr	\$130.00	0
	10/31/17	RLA	Letter from PRB; letter to client; review final draft to be filed; notice of filing	0.70 hrs	490/hr	\$343.00	0
	10/31/17	PRB	Finalize and supervise filing of appellate brief	1.70 hrs	300/hr	\$510.00	0
	10/31/17	MCLI	Assist with preparation and filing of Brief; calls with J. Burnbaum of NDGA regarding records filed under seal; emails with PRB and JAW re: same	1.60 hrs	210/hr	\$336.00	0
	11/01/17	PRB	Supervise compilation of appendix and confer with opposing counsel about contents	0.30 hrs	300/hr	\$90.00	0
	11/02/17	JAW	Coordinate with MCLI re: preparing appendix	0.20 hrs	325/hr	\$65.00	0
	11/02/17	RLA	Review efilng	0.30 hrs	490/hr	\$147.00	0
W170	11/02/17	PRB	Confer with MCLI about Appendix content	0.20 hrs	300/hr	\$60.00	0
	11/02/17	MCLI	Begin preparing appendix in support for filing; office conferences and emails with PRB and JAW re: same	4.10 hrs	210/hr	\$861.00	0
	11/03/17	RLA	Letters to and from PRB, JAW and MCLI	0.30 hrs	490/hr	\$147.00	0
	11/03/17	PRB	Continue work supervising the appendix assembly; confer with opposing counsel about materials under seal	0.30 hrs	300/hr	\$90.00	0

11/03/17	MCLI	Multiple conferences with USDC Northern District of Georgia (J. Burnbaum - Docketing Supervisor) and 11th Circuit (Jenet Meyer - case manager) re: need to copies of documents filed under seal; emails with RLA, PRB and JAW re: same	0.90 hrs	210/hr	\$189.00	0
11/06/17	RLA	Emails regarding record filing requirements in the 11th Circuit with MCLI, JAW, PRB	0.60 hrs	490/hr	\$294.00	0
11/06/17	PRB	Confer with opposing counsel and supervise filing of Appendix	0.60 hrs	300/hr	\$180.00	0
11/06/17	MCLI	Continue with preparation of appendix exhibits; research local rules and requirements for filing;	2.70 hrs	210/hr	\$567.00	0
11/07/17	RLA	Letter from MCLI regarding appendix logistics; letters to and from Evan Anderson	0.20 hrs	490/hr	\$98.00	0
11/07/17	PRB	Review and supervise filing of Appendix	0.50 hrs	300/hr	\$150.00	0
11/07/17	MCLI	Finalize and file Appendix with distribution of service copies; prepare under seal filed documents for filing with the court	6.20 hrs	210/hr	\$1,302.00	0
11/10/17	RLA	Letter to and from client	0.10 hrs	490/hr	\$49.00	0
11/13/17	RLA	Letter from 11th Circuit	0.10 hrs	490/hr	\$49.00	0
11/13/17	PRB	Review information from Clerk regarding the Appendix and confer with MCLI and RLA	0.30 hrs	300/hr	\$90.00	0
11/13/17	MCLI	Telephone conference with Court of Appeals re: notice of deficiency in mailing;	0.20 hrs	210/hr	\$42.00	0
11/14/17	MCLI	Calls and emails with Clerk of Court regarding formatting of hard copy appendix and need to be split into volumes;	0.30 hrs	210/hr	\$63.00	0
11/15/17	MCLI	Reformat hard copies of appedix per 11th Circuit Court case manager request	1.20 hrs	210/hr	\$252.00	0
11/21/17	PRB	Confer with opposing counsel about brief extension	0.20 hrs	300/hr	\$60.00	0
11/22/17	MCLI	Review of Court minute order and update docket and response dates	0.20 hrs	210/hr	\$42.00	0
12/14/17	PRB	Analyze ITW's appellate brief	1.30 hrs	300/hr	\$390.00	0
12/15/17	RLA	Start review of ITW's reply brief	0.70 hrs	490/hr	\$343.00	0
12/18/17	RLA	Letter from PRB	0.10 hrs	490/hr	\$49.00	0
12/18/17	PRB	Begin work outlining response and reply arguments	1.70 hrs	300/hr	\$510.00	0
12/20/17	PRB	Review notice of deficiency	0.10 hrs	300/hr	\$30.00	0
12/21/17	RLA	Letters to and from client	0.20 hrs	490/hr	\$98.00	0
12/27/17	PRB	Confer with opposing counsel about briefing deadlines	0.10 hrs	300/hr	\$30.00	0

12/28/17	JAW	Review Appellee Brief; email PRB with comments re: brief	1.80 hrs	325/hr	\$585.00	0
12/28/17	PRB	Confer with JAW about appellate arguments	0.20 hrs	300/hr	\$60.00	0
01/03/18	PRB	Confer with opposing counsel and JAW about extension	0.20 hrs	315/hr	\$63.00	0
01/04/18	JAW	Review 11th Circuit Rules and telephone clerk re: 7 day extension	0.20 hrs	340/hr	\$68.00	0
01/04/18	RLA	Review notice of extension granted	0.10 hrs	490/hr	\$49.00	0
01/04/18	MCLI	Monitor case schedule and upcoming deadlines	0.20 hrs	220/hr	\$44.00	0
01/10/18	JAW	Research whether a plan administrator may deny benefits for specific reason and then argue for a different reason during litigation; draft insert to reply brief re: same	6.10 hrs	340/hr	\$2,074.00	0
01/18/18	JAW	Draft Reply Brief	4.40 hrs	340/hr	\$1,496.00	0
01/18/18	PRB	Prepare for and participate in strategy call with JAW to discuss appellate arguments	1.70 hrs	315/hr	\$535.50	0
01/19/18	JAW	Draft Reply Brief	5.30 hrs	340/hr	\$1,802.00	0
01/20/18	PRB	Review and revise reply arguments for appellate brief	4.50 hrs	315/hr	\$1,417.50	0
01/21/18	PRB	Review and revise arguments responding to cross appeal	3.80 hrs	315/hr	\$1,197.00	0
01/22/18	RLA	Letter from PRB regarding draft reply brief	0.40 hrs	490/hr	\$196.00	0
01/22/18	PRB	Analyze attorney fee case law cited by ITW, and revise response to cross appeal	6.80 hrs	315/hr	\$2,142.00	0
01/22/18	PRB	Review and revise reply arguments for appellate brief, and confer with BOLD about editing and format changes	5.90 hrs	315/hr	\$1,858.50	0
01/23/18	RLA	Review and comment on PRB draft brief; letter to PRB; letter to client and PRB	0.90 hrs	490/hr	\$441.00	0
01/23/18	PRB	Confer with RLA, make final revisions to appellate brief, and supervise filing	6.10 hrs	315/hr	\$1,921.50	0
01/23/18	MCLI	Assist with revisions/edits to response brief; filing of same; calls to Clerk of the Court regarding Certificate of Interested Persons filing; prepare for distribution mandatory service copies for court	1.20 hrs	220/hr	\$264.00	0
01/24/18	MCLI	Assist with finalizing and filing of brief	1.10 hrs	220/hr	\$242.00	0
01/25/18	MCLI	Monitor case schedule and upcoming deadlines	0.10 hrs	220/hr	\$22.00	0
01/31/18	RLA	Letters to and from Mark Cline regarding Clerk's Office minstructions regarding disclosure statement	0.20 hrs	490/hr	\$98.00	0

02/20/18	PRB	Analyze reply brief	1.30 hrs	315/hr	\$409.50	0
03/02/18	MCLI	Multiple calls with 11th Cir case manager re: need for additional copies of Appendix for oral argument; begin preparing same for distribution	2.50 hrs	220/hr	\$550.00	0
03/05/18	RLA	Telephone conference with Mark Cline; letter from 11th Circuit; letter to client; letter to PRB	0.60 hrs	490/hr	\$294.00	0
03/05/18	MCLI	Prepare additional volumes of entire Appendix for 11th Circuit Oral Argument; calls with Mary Marshall, case manager and with delivering courier	1.70 hrs	220/hr	\$374.00	0
03/06/18	PRB	Confer with RLA and MCLI, and begin preparations for oral argument	0.50 hrs	315/hr	\$157.50	0
03/09/18	MCLI	Prepare briefing binders	0.70 hrs	220/hr	\$154.00	0
03/12/18	MCLI	Calls to 11th Circuit case manager inquiring about Oral Argument; continue with briefing binders	0.70 hrs	220/hr	\$154.00	0
03/15/18	PRB	Begin review of pleadings in preparation for oral argument	3.20 hrs	315/hr	\$1,008.00	0
03/16/18	PRB	Continue review of pleadings in preparation for oral argument	2.90 hrs	315/hr	\$913.50	0
03/22/18	PRB	Continue oral argument preparation	2.30 hrs	315/hr	\$724.50	0
04/10/18	PRB	Continue review of key cases in preparation for oral argument	3.90 hrs	315/hr	\$1,228.50	0
05/07/18	ACAM	Review case status	0.20 hrs	220/hr	\$44.00	0
05/09/18	RLA	Review 11th Circuit oral argument calendar	0.20 hrs	490/hr	\$98.00	0
05/14/18	RLA	Letter from client	0.10 hrs	490/hr	\$49.00	0
06/14/18	SKB	Review court notice, update event dates in Prolaw	0.20 hrs	220/hr	\$44.00	0
06/14/18	RLA	Letters to and from 11th Circuit regarding calendaring oral argument	0.20 hrs	490/hr	\$98.00	0
06/14/18	PRB	Review information on oral argument	0.20 hrs	315/hr	\$63.00	0
06/15/18	RLA	Letter to and from client	0.20 hrs	490/hr	\$98.00	0
06/18/18	RLA	Letter to and from client regarding oral argument	0.30 hrs	490/hr	\$147.00	0
06/19/18	RLA	Conference with RTC, WJH, and JMR; letter to PRB regarding moot court	0.30 hrs	490/hr	\$147.00	0
06/22/18	PRB	Continue work preparing for oral argument	0.80 hrs	315/hr	\$252.00	0
07/16/18	SKB	Download case law for attorney oral argument preparation	0.50 hrs	220/hr	\$110.00	0
07/16/18	PRB	Begin review of pertinent case law in preparation for oral argument	1.40 hrs	315/hr	\$441.00	0



07/19/18	SKB	Prepare attorney materials for hearing, confer with PRB re: same	0.80 hrs	220/hr	\$176.00	0
07/19/18	PRB	Continue review of key cases for oral argument	3.10 hrs	315/hr	\$976.50	0
07/20/18	SKB	Prepare attorney materials for oral argument	1.80 hrs	220/hr	\$396.00	0
07/31/18	SKB	Review case citations for judges on panel, e-mail PRB re: same	0.30 hrs	220/hr	\$66.00	0
07/31/18	SKB	Communication with court deputy re: judges on panel, e-mails with PRB re: same	0.20 hrs	220/hr	\$44.00	0
07/31/18	SKB	Meeting with PRB re: defendant's production, review e-mails and correspondence re: same	1.50 hrs	220/hr	\$330.00	0
07/31/18	RLA	Letter from and conference with PRB	0.30 hrs	490/hr	\$147.00	0
07/31/18	PRB	Confer with SKB about panelists and research needed for oral argument	0.30 hrs	315/hr	\$94.50	0
07/31/18	PRB	Continue work analyzing key cases in advance of oral argument	2.90 hrs	315/hr	\$913.50	0
08/01/18	JAW	Research prior ERISA cases and background information on Judge Paul C. Huck	0.90 hrs	340/hr	\$306.00	0
08/01/18	PRB	Continue in-depth review of all cited case law in advance of oral argument	4.20 hrs	315/hr	\$1,323.00	0
08/01/18	PRB	Call with Mr. Boysen to discuss newly-announced panel and key issues for oral argument	1.00 hrs	0/hr	N/C	0
08/02/18	JAW	Additional research into Judge's Tjoflat's and Judge Jordan's opinions regarding ERISA	1.90 hrs	340/hr	\$646.00	0
08/02/18	JAW	Research background information and prior ERISA cases of Judges Jordan and Tjoflat	2.20 hrs	340/hr	\$748.00	0
08/02/18	SKB	Draft timeline of discovery dispute, e-mail same to PRB	0.80 hrs	220/hr	\$176.00	0
08/02/18	PRB	Continue in-depth review of all cited case law in advance of oral argument	5.10 hrs	315/hr	\$1,606.50	0
08/03/18	JAW	Additional research into Judge Tjoflat's and Judge Jordan's opinions regarding ERISA and draft summary of same	2.90 hrs	340/hr	\$986.00	0
08/03/18	PRB	Begin review of panelists for oral argument	1.00 hrs	315/hr	\$315.00	0
08/06/18	JAW	Revise summaries of Judges Tjoflat and Jordan and compile opinions in notebook	0.90 hrs	340/hr	\$306.00	0
08/06/18	SKB	Prepare documents for moot court panel	0.20 hrs	220/hr	\$44.00	0
08/06/18	RLA	Moot court scheduling	0.20 hrs	490/hr	\$98.00	0
08/06/18	PRB	Begin work outlining oral argument	2.70 hrs	315/hr	\$850.50	0

08/07/18	SKB	Prepare attorney documents for moot argument	1.30 hrs	220/hr	\$286.00	0
08/07/18	PRB	Continue work outlining oral argument	1.80 hrs	315/hr	\$567.00	0
08/08/18	RLA	Moot court preparation	0.40 hrs	490/hr	\$196.00	0
08/08/18	PRB	Outline key facts and documents for use in oral argument	3.30 hrs	315/hr	\$1,039.50	0
08/09/18	RLA	Moot court and oral argument preparation	1.00 hrs	490/hr	\$490.00	0
08/10/18	JMR	Review 11th Circuit pleadings	2.50 hrs	725/hr	\$1,812.50	0
08/10/18	PRB	Outline key facts and documents for use in oral argument	4.10 hrs	315/hr	\$1,291.50	0
08/12/18	PRB	Draft mini case summaries in preparation for oral argument	6.40 hrs	315/hr	\$2,016.00	0
08/12/18	PRB	Draft mini case summaries in preparation for oral argument	6.40 hrs	315/hr	\$2,016.00	0
08/13/18	JAW	Review briefs on appeal and key cases; review summary of panel; attend mock argument	2.90 hrs	340/hr	\$986.00	0
08/13/18	JMR	Participate in mock argument	1.90 hrs	725/hr	\$1,377.50	0
08/13/18	RTC	Review appeal briefs; participate in mock argument	2.90 hrs	670/hr	\$1,943.00	0
08/13/18	JGUN	Participate in moot court	1.30 hrs	280/hr	\$364.00	0
08/13/18	RLA	Prepare for and participate in moot court for PRB	1.80 hrs	490/hr	\$882.00	0
08/13/18	PRB	Moot session to practice argument	1.20 hrs	315/hr	\$378.00	0
08/13/18	PRB	Final review and preparation of materials for moot session	4.90 hrs	315/hr	\$1,543.50	0
08/14/18	PRB	Revise argument to address ERISA decisions by panelists	3.00 hrs	315/hr	\$945.00	0
08/14/18	PRB	Analyze ERISA decisions by panelists	4.40 hrs	315/hr	\$1,386.00	0
08/15/18	JMR	Attend preparation for Appeal argument	0.90 hrs	725/hr	\$652.50	0
08/15/18	RLA	Letter to and from client; participate in second moot court for PRB; conference with client; review late filing by ITW counsel; letters to and from PRB regarding same	2.30 hrs	490/hr	\$1,127.00	0
08/15/18	PRB	Final preparation for oral argument	5.60 hrs	315/hr	\$1,764.00	0
08/15/18	PRB	Second moot session in preparation for argument	1.40 hrs	315/hr	\$441.00	0
08/15/18	PRB	Analyze notice of supplemental authority and outline responses	1.30 hrs	315/hr	\$409.50	0
08/16/18	JAW	Attend oral argument at 11th Circuit Court of Appeals	2.10 hrs	340/hr	\$714.00	0

08/16/18	RLA	Conference with client; conference with PRB; complete preparation and attend oral argument by PRB in the Eleventh Circuit; debrief with client and RPB; debrief with client and Julie Wood; letter from client	3.30 hrs	490/hr	\$1,617.00	0
08/16/18	PRB	Oral argument	3.50 hrs	315/hr	\$1,102.50	0
08/17/18	RLA	Letter to and from client; emails with PRB and client	0.40 hrs	490/hr	\$196.00	0
08/17/18	PRB	Confer with Mr. Boysen about remand options	0.20 hrs	315/hr	\$63.00	0
10/01/18	PRB	Confer with Mr. Boysen regarding status of appeal	0.20 hrs	315/hr	\$63.00	0
04/03/19	JAW	Review 11th Circuit's opinion	0.70 hrs	365/hr	\$255.50	0
04/03/19	SKB	Review order, confirm rules and schedule associated event deadlines	0.20 hrs	245/hr	\$49.00	0
04/03/19	PRB	Analyze Circuit Court opinion and identify language to use in fee petition	1.10 hrs	355/hr	\$390.50	0
04/04/19	JAW	Research attorney's fees procedure and when fees may be granted by appellate court	1.20 hrs	365/hr	\$438.00	0
04/05/19	JAW	Research timing of filing bill of costs and application for attorney fees; research standard for eligibility for attorneys fees by ERISA claimant upon remand	1.60 hrs	365/hr	\$584.00	0
04/05/19	RLA	Letter from client	0.20 hrs	550/hr	\$110.00	0
04/08/19	JAW	Research standard for eligibility for attorneys fees by ERISA claimant upon remand and other five factors considered by 11th Circuit in determining whether to award attorneys' fees to an ERISA claimant	2.80 hrs	365/hr	N/C	0
04/08/19	SKB	Confer with JAW re bill of cost filing, compile figures for same and draft form for filing	1.50 hrs	245/hr	\$367.50	0
04/08/19	RLA	Telephone conference with PRB	0.20 hrs	550/hr	\$110.00	0
04/08/19	PRB	Confer with JAW about bill of costs and motion for recovery of attorneys' fees	0.40 hrs	355/hr	\$142.00	0
04/09/19	JAW	Review filing of ITW in support of its attorneys' fees at district court; pull bios of ITW's lawyers to compare with district court filing; further research re: attorneys fees	0.90 hrs	365/hr	\$328.50	0
04/09/19	RLA	Conference with PRB; conference with JAW; review ITW's attorneys' fees motion	0.60 hrs	550/hr	\$330.00	0
04/09/19	PRB	Supervise bill of costs	0.40 hrs	355/hr	\$142.00	0
04/10/19	JAW	Research re: procedural posture of claimant filing a motion for attorneys' fees when appellate court remands to district court re: no full and fair review	2.00 hrs	365/hr	\$730.00	0
04/10/19	SKB	Confirm fees paid for bill of costs and rules for	0.30 hrs	245/hr	\$73.50	0

same, e-mail PRB and JAW re same

04/10/19	RLA	Letter from PRB regarding costs and fees filings	0.20 hrs	550/hr	\$110.00	0
04/10/19	PRB	Analyze recent decisions where circuit courts determined eligibility for fees prior to a remand to the plan administrator	1.00 hrs	355/hr	\$355.00	0
04/11/19	JAW	Draft fee application; review bills; compile information for fee application; draft memo	4.10 hrs	365/hr	\$1,496.50	0
04/11/19	SKB	Meeting with JAW re motion for attorneys' fees, request all bills from accounting, review of same	1.00 hrs	245/hr	\$245.00	0
04/11/19	PRB	Analyze costs to exclude from fee petition	0.20 hrs	355/hr	\$71.00	0
04/12/19	JAW	Draft brief; review time sheets; conference with Shay re: fee application forms for each attorney/paralegal	2.40 hrs	365/hr	\$876.00	0
04/12/19	SKB	Confer with JAW re timekeeper task categories for motion for attorneys' fees, begin review of billing for each timekeeper	1.50 hrs	245/hr	\$367.50	0
04/14/19	RLA	Internal calendaring	0.10 hrs	550/hr	\$55.00	0
04/15/19	JAW	Finalize and supervise filing bill of costs; draft motion in support of application for attorneys' fees	3.50 hrs	365/hr	\$1,277.50	0
04/15/19	SKB	Prepare documents for motion for attorneys' fees	1.50 hrs	245/hr	\$367.50	0
04/15/19	PRB	Supervise filing of bill of costs	0.20 hrs	355/hr	\$71.00	0
04/16/19	JAW	Research "some success" standard under Hardt; draft memorandum in support of application for attorney's fees	4.70 hrs	365/hr	\$1,715.50	0
04/16/19	SKB	Prepare documents for application for attorneys' fees	5.00 hrs	245/hr	\$1,225.00	0
04/17/19	JAW	Draft Declaration of Mr. Ashe; draft memorandum in support of application for attorney's fees	5.10 hrs	365/hr	\$1,861.50	0
04/18/19	JAW	Revise Declaration of Mr. Ashe; revise memorandum in support of application for attorney's fees	3.70 hrs	365/hr	\$1,350.50	0
04/18/19	PRB	Analyze fee amounts	0.60 hrs	355/hr	\$213.00	0
04/22/19	SKB	Prepare calculations for motions for attorneys' fees	3.00 hrs	245/hr	\$735.00	0
04/23/19	SKB	Prepare calculations for motion for attorneys' fees	3.00 hrs	245/hr	\$735.00	0
04/24/19	SKB	Review petition for rehearing en banc, review rules associated with filing, e-mails with JAW re same	0.20 hrs	245/hr	\$49.00	0
04/24/19	RLA	Review and comment on ITW's motion for Rehearing en banc	0.70 hrs	550/hr	\$385.00	0
04/24/19	PRB	Analyze petition for rehearing en banc	0.50 hrs	355/hr	\$177.50	0

04/25/19	JAW	Review Petition for Rehearing En Banc and review rules re: not filing response to petition and change of deadline for attorneys' fees motion; review internal operating rules re: polls taken for en banc petitions, etc.; review 11th Circuit's website re: number of cases in which there were polls and the court's decision on those polls; conference with RLA re: petition and arguments therein	1.80 hrs	365/hr	\$657.00	0
05/01/19	RLA	Letters to and from PRB regarding filing deadline	0.20 hrs	550/hr	\$110.00	0
TOTAL PROFESSIONAL FEES:			432.30 hrs		\$140,662.50	

**BILLING SUMMARY**

Current Total Fees:	432.30 hrs	\$140,662.50
Current Total Expenses:		\$0.00
<i>Less Prepaid Applied:</i>		<i>(\$10,000.00)</i>
<b>CURRENT AMOUNT DUE:</b>		<b>\$130,662.50</b>
Balance Forward		\$71.75
PAYMENTS APPLIED THROUGH 12/7/2018		(\$71.75)
Less Adjustments Applied		(\$0.00)
<b>TOTAL AMOUNT NOW DUE</b>		<b>\$130,662.50</b>

*Pre-Paid Balance Remaining* **\$0.00**

**WORKED TIMEKEEPER RECAP**

JMR	Rainer, J. Marbury	5.30 hrs	725.00	\$3,842.50
RTC	Coleman, Ron T.	2.90 hrs	670.00	\$1,943.00
RLA	Ashe, R. Lawrence	36.20 hrs	493.65	\$17,870.00
PRB	Barsness, Paul R.	204.00 hrs	307.99	\$62,829.50
JGUN	Gunter, Justin P	4.80 hrs	269.06	\$1,291.50
JDA	Wood, Julie A.	119.20 hrs	331.75	\$39,545.00
SKB	Burdette, Shay K	24.80 hrs	237.34	\$5,886.00
ACAM	Cameron, Anita	0.20 hrs	220.00	\$44.00
MCLI	Cline, Mark	34.90 hrs	212.35	\$7,411.00

# EXHIBIT 4



**UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT**  
**Form to Accompany Application for Attorney's Fees**

Summary of work performed by (name): R. Lawrence Ash

Total compensation requested for this person: \$66,199.00

Hourly rate of compensation requested for this person: \$490.00

This person is an:

☒ attorney    ☐ law student/graduate    ☐ certified paralegal    ☐ other: \_\_\_\_\_

Category	Total Hours
Interviews and conferences	
Obtaining and reviewing records	
Legal research	
Brief writing	
Preparing for and attending oral argument	
Other (specify on additional sheets if necessary):	See Attachment
Total hours claimed for this person	135.10

*Instructions: on the applicable lines, enter the total time spent in each category. A separate form must be completed for each person for whom time is claimed. Attach contemporaneous time records reflecting all hours listed and indicating the dates on which the work was performed. An affidavit attesting to the truthfulness of the information contained in the application and demonstrating the basis for the hourly rate(s) requested must also accompany the application.*

Form to Accompany Application for Attorneys' Fees Attachment  
 No. 17-13145-FF  
 Summary for R. Lawrence Ash, Esquire  
 Hours Worked on USDC Case

Category	Total Hours
Pre-complaint Correspondence and Investigation	10.00
Complaint and Reviewing Answer	7.30
Discovery	87.40
Discovery Motions	6.70
Settlement	3.70
Motion for Summary Judgment	11.90
Fee Motion and Bill of Costs	1.50
Emergency Motion	6.30
Pre-Appeal Preparation and Evaluation	.30
<b>TOTAL HOURS</b>	<b>135.10</b>

**UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT**  
**Form to Accompany Application for Attorney's Fees**

Summary of work performed by (name): Paul R. Barsness

Total compensation requested for this person: \$63,800.00

Hourly rate of compensation requested for this person: \$250.00

This person is an:

☒ attorney    ☐ law student/graduate    ☐ certified paralegal    ☐ other: \_\_\_\_\_

Category	Total Hours
Interviews and conferences	
Obtaining and reviewing records	
Legal research	
Brief writing	
Preparing for and attending oral argument	
Other (specify on additional sheets if necessary):	See Attachment
Total hours claimed for this person	255.20

*Instructions: on the applicable lines, enter the total time spent in each category. A separate form must be completed for each person for whom time is claimed. Attach contemporaneous time records reflecting all hours listed and indicating the dates on which the work was performed. An affidavit attesting to the truthfulness of the information contained in the application and demonstrating the basis for the hourly rate(s) requested must also accompany the application.*

Form to Accompany Application for Attorneys' Fees Attachment  
 No. 17-13145-FF  
 Summary for Paul R. Barsness, Esquire  
 Hours Worked on USDC Case

<b>Category</b>	<b>Total Hours</b>
Pre-complaint Correspondence and Investigation	37.40
Complaint and Reviewing Answer	8.20
Discovery	12.50
Discovery Motions	5.60
Settlement	5.50
Motion for Summary Judgment	111.60
Fee Motion and Bill of Costs	23.50
Emergency Motion	49.70
Pre-Appeal Preparation and Evaluation	1.20
<b>TOTAL HOURS</b>	<b>255.20</b>

**UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT**  
**Form to Accompany Application for Attorney's Fees**

Summary of work performed by (name): Shay K. Burdette

Total compensation requested for this person: \$1,311.00

Hourly rate of compensation requested for this person: \$190.00

This person is an:

☐ attorney ☐ law student/graduate ☒ certified paralegal ☐ other: \_\_\_\_\_

Category	Total Hours
Interviews and conferences	
Obtaining and reviewing records	
Legal research	
Brief writing	
Preparing for and attending oral argument	
Other (specify on additional sheets if necessary):	See Attachment
Total hours claimed for this person	6.90

*Instructions: on the applicable lines, enter the total time spent in each category. A separate form must be completed for each person for whom time is claimed. Attach contemporaneous time records reflecting all hours listed and indicating the dates on which the work was performed. An affidavit attesting to the truthfulness of the information contained in the application and demonstrating the basis for the hourly rate(s) requested must also accompany the application.*



Form to Accompany Application for Attorneys' Fees Attachment  
 No. 17-13145-FF  
 Summary for Shay K. Burdette  
 Hours Worked on USDC Case

<b>Category</b>	<b>Total Hours</b>
Pre-complaint Correspondence and Investigation	.20
Complaint and Reviewing Answer	
Discovery	6.10
Discovery Motions	
Settlement	
Motion for Summary Judgment	.20
Fee Motion and Bill of Costs	
Emergency Motion	.20
Pre-Appeal Preparation and Evaluation	.20
<b>TOTAL HOURS</b>	<b>6.90</b>

Form to Accompany Application for Attorneys' Fees Attachment  
 No. 17-13145-FF  
 Summary for Mark Cline  
 Hours Worked on USDC Case

Category	Total Hours
Pre-complaint Correspondence and Investigation	
Complaint and Reviewing Answer	
Discovery	5.10
Discovery Motions	4.50
Settlement	
Motion for Summary Judgment	.90
Fee Motion and Bill of Costs	.80
Emergency Motion	
Pre-Appeal Preparation and Evaluation	
<b>TOTAL HOURS</b>	<b>11.30</b>



**UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT**  
**Form to Accompany Application for Attorney's Fees**

Summary of work performed by (name): Mark Cline

Total compensation requested for this person: \$2,268.00

Hourly rate of compensation requested for this person: \$200.71 (weighted average rate)

This person is an:

☐ attorney    ☐ law student/graduate    ☒ certified paralegal    ☐ other: \_\_\_\_\_

Category	Total Hours
Interviews and conferences	
Obtaining and reviewing records	
Legal research	
Brief writing	
Preparing for and attending oral argument	
Other (specify on additional sheets if necessary):	See Attachment
Total hours claimed for this person	11.30

*Instructions: on the applicable lines, enter the total time spent in each category. A separate form must be completed for each person for whom time is claimed. Attach contemporaneous time records reflecting all hours listed and indicating the dates on which the work was performed. An affidavit attesting to the truthfulness of the information contained in the application and demonstrating the basis for the hourly rate(s) requested must also accompany the application.*

**UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT**  
**Form to Accompany Application for Attorney's Fees**

Summary of work performed by (name): Katrina L. Hodges

Total compensation requested for this person: \$13,528.00

Hourly rate of compensation requested for this person: \$190.00

This person is an:

☒ attorney    ☐ law student/graduate    ☐ certified paralegal    ☐ other: \_\_\_\_\_

Category	Total Hours
Interviews and conferences	
Obtaining and reviewing records	
Legal research	
Brief writing	
Preparing for and attending oral argument	
Other (specify on additional sheets if necessary):	See Attachment
Total hours claimed for this person	71.2

*Instructions: on the applicable lines, enter the total time spent in each category. A separate form must be completed for each person for whom time is claimed. Attach contemporaneous time records reflecting all hours listed and indicating the dates on which the work was performed. An affidavit attesting to the truthfulness of the information contained in the application and demonstrating the basis for the hourly rate(s) requested must also accompany the application.*

Form to Accompany Application for Attorneys' Fees Attachment  
 No. 17-13145-FF  
 Summary for Katrina L. Hodges, Esquire  
 Hours Worked on USDC Case

Category	Total Hours
Pre-complaint Correspondence and Investigation	
Complaint and Reviewing Answer	
Discovery	.20
Discovery Motions	9.20
Settlement	
Motion for Summary Judgment	61.80
Fee Motion and Bill of Costs	
Emergency Motion	
Pre-Appeal Preparation and Evaluation	
<b>TOTAL HOURS</b>	<b>71.20</b>

**UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT**  
**Form to Accompany Application for Attorney's Fees**

Summary of work performed by (name): Tiffany R. Johnson

Total compensation requested for this person: \$36,624.00

Hourly rate of compensation requested for this person: \$210.00

This person is an:

☒ attorney    ☐ law student/graduate    ☐ certified paralegal    ☐ other: \_\_\_\_\_

Category	Total Hours
Interviews and conferences	
Obtaining and reviewing records	
Legal research	
Brief writing	
Preparing for and attending oral argument	
Other (specify on additional sheets if necessary):	See Attachment
Total hours claimed for this person	174.40

*Instructions: on the applicable lines, enter the total time spent in each category. A separate form must be completed for each person for whom time is claimed. Attach contemporaneous time records reflecting all hours listed and indicating the dates on which the work was performed. An affidavit attesting to the truthfulness of the information contained in the application and demonstrating the basis for the hourly rate(s) requested must also accompany the application.*

Form to Accompany Application for Attorneys' Fees Attachment  
 No. 17-13145-FF  
 Summary for Tiffany R. Johnson, Esquire  
 Hours Worked on USDC Case

<b>Category</b>	<b>Total Hours</b>
Pre-complaint Correspondence and Investigation	1.50
Complaint and Reviewing Answer	9.70
Discovery	103.10
Discovery Motions	42.60
Settlement	3.50
Motion for Summary Judgment	14.00
Fee Motion and Bill of Costs	
Emergency Motion	
Pre-Appeal Preparation and Evaluation	
<b>TOTAL HOURS</b>	<b>174.40</b>



Form to Accompany Application for Attorneys' Fees Attachment  
 No. 17-13145-FF  
 Summary for Julie A. Wood, Esquire  
 Hours Worked on USDC Case

<b>Category</b>	<b>Total Hours</b>
Pre-complaint Correspondence and Investigation	
Complaint and Reviewing Answer	
Discovery	
Discovery Motions	
Settlement	
Motion for Summary Judgment	
Fee Motion and Bill of Costs	
Emergency Motion	
Pre-Appeal Preparation and Evaluation	5.20
<b>TOTAL HOURS</b>	<b>5.20</b>

**UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT**  
**Form to Accompany Application for Attorney's Fees**

Summary of work performed by (name): Julie A. Wood

Total compensation requested for this person: \$1,690.00

Hourly rate of compensation requested for this person: \$325.00

This person is an:

☒ attorney    ☐ law student/graduate    ☐ certified paralegal    ☐ other: \_\_\_\_\_

Category	Total Hours
Interviews and conferences	
Obtaining and reviewing records	
Legal research	
Brief writing	
Preparing for and attending oral argument	
Other (specify on additional sheets if necessary):	See Attachment
Total hours claimed for this person	5.20

*Instructions: on the applicable lines, enter the total time spent in each category. A separate form must be completed for each person for whom time is claimed. Attach contemporaneous time records reflecting all hours listed and indicating the dates on which the work was performed. An affidavit attesting to the truthfulness of the information contained in the application and demonstrating the basis for the hourly rate(s) requested must also accompany the application.*



# EXHIBIT 5

**UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT**  
**Form to Accompany Application for Attorney's Fees**

Summary of work performed by (name): R. Lawrence Ash

Total compensation requested for this person: \$17,870.00

Hourly rate of compensation requested for this person: \$493.65 (weighted average rate)

This person is an:

☒ attorney    ☐ law student/graduate    ☐ certified paralegal    ☐ other: \_\_\_\_\_

Category	Total Hours
Interviews and conferences	6.50
Obtaining and reviewing records	2.10
Legal research	
Brief writing	3.10
Preparing for and attending oral argument	10.50
Other (specify on additional sheets if necessary):	
Mediation	12.10
Fee Application	1.90
Total hours claimed for this person	36.20

*Instructions: on the applicable lines, enter the total time spent in each category. A separate form must be completed for each person for whom time is claimed. Attach contemporaneous time records reflecting all hours listed and indicating the dates on which the work was performed. An affidavit attesting to the truthfulness of the information contained in the application and demonstrating the basis for the hourly rate(s) requested must also accompany the application.*

**UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT**  
**Form to Accompany Application for Attorney's Fees**

Summary of work performed by (name): Paul R. Barsness

Total compensation requested for this person: \$62,829.50

Hourly rate of compensation requested for this person: \$307.99 (weighted average rate)

This person is an:

☒ attorney    ☐ law student/graduate    ☐ certified paralegal    ☐ other: \_\_\_\_\_

Category	Total Hours
Interviews and conferences	3.30
Obtaining and reviewing records	7.30
Legal research	18.10
Brief writing	69.30
Preparing for and attending oral argument	81.50
Other (specify on additional sheets if necessary):	
Mediation	20.10
Fee Application	4.40
Total hours claimed for this person	204.00

*Instructions: on the applicable lines, enter the total time spent in each category. A separate form must be completed for each person for whom time is claimed. Attach contemporaneous time records reflecting all hours listed and indicating the dates on which the work was performed. An affidavit attesting to the truthfulness of the information contained in the application and demonstrating the basis for the hourly rate(s) requested must also accompany the application.*

**UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT**  
**Form to Accompany Application for Attorney's Fees**

Summary of work performed by (name): Shay K. Burdette

Total compensation requested for this person: \$5,886.00

Hourly rate of compensation requested for this person: \$237.34 (weighted average rate)

This person is an:

☐ attorney    ☐ law student/graduate    ☒ certified paralegal    ☐ other: \_\_\_\_\_

Category	Total Hours
Interviews and conferences	
Obtaining and reviewing records	
Legal research	
Brief writing	.20
Preparing for and attending oral argument	7.40
Other (specify on additional sheets if necessary): Fee Application	17.20
Total hours claimed for this person	24.80

*Instructions: on the applicable lines, enter the total time spent in each category. A separate form must be completed for each person for whom time is claimed. Attach contemporaneous time records reflecting all hours listed and indicating the dates on which the work was performed. An affidavit attesting to the truthfulness of the information contained in the application and demonstrating the basis for the hourly rate(s) requested must also accompany the application.*



**UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT**  
**Form to Accompany Application for Attorney's Fees**

Summary of work performed by (name): Mark Cline

Total compensation requested for this person: \$7,411.00

Hourly rate of compensation requested for this person: \$212.35 (weighted average rate)

This person is an:

☐ attorney    ☐ law student/graduate    ☒ certified paralegal    ☐ other: \_\_\_\_\_

Category	Total Hours
Interviews and conferences	5.50
Obtaining and reviewing records	6.40
Legal research	.90
Brief writing	20.70
Preparing for and attending oral argument	1.40
Other (specify on additional sheets if necessary):	
Total hours claimed for this person	34.90

*Instructions: on the applicable lines, enter the total time spent in each category. A separate form must be completed for each person for whom time is claimed. Attach contemporaneous time records reflecting all hours listed and indicating the dates on which the work was performed. An affidavit attesting to the truthfulness of the information contained in the application and demonstrating the basis for the hourly rate(s) requested must also accompany the application.*

**UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT**  
**Form to Accompany Application for Attorney's Fees**

Summary of work performed by (name): Julie A. Wood

Total compensation requested for this person: \$39,545.00

Hourly rate of compensation requested for this person: \$331.75 (weighted average rate)

This person is an:

☒ attorney    ☐ law student/graduate    ☐ certified paralegal    ☐ other: \_\_\_\_\_

Category	Total Hours
Interviews and conferences	
Obtaining and reviewing records	6.50
Legal research	18.50
Brief writing	46.90
Preparing for and attending oral argument	5.00
Other (specify on additional sheets if necessary):	
Mediation	7.80
Fee Application	34.50
Total hours claimed for this person	119.20

*Instructions: on the applicable lines, enter the total time spent in each category. A separate form must be completed for each person for whom time is claimed. Attach contemporaneous time records reflecting all hours listed and indicating the dates on which the work was performed. An affidavit attesting to the truthfulness of the information contained in the application and demonstrating the basis for the hourly rate(s) requested must also accompany the application.*

# EXHIBIT 6



**Parker, Hudson, Rainer & Dobbs LLP**

A LIMITED LIABILITY PARTNERSHIP

**ATTORNEYS AT LAW  
1500 MARQUIS TWO TOWER  
285 PEACHTREE CENTER AVENUE, N.E.  
ATLANTA, GA 30303  
(404) 523-5300**

EIN: 58-1423485

Invoice Date: 06/30/2015  
Invoice No. 224638  
Client No.: 005820 RLA

David Boysen  
3308 S. Eddy  
Amarillo, TX 79109

**Re: Employment Advice  
(005820/00001C)**

**FOR PROFESSIONAL SERVICES RENDERED THROUGH: June 30, 2015**

CURRENT TOTAL EXPENSES \$407.44

CURRENT AMOUNT DUE: \$407.44

TOTAL BALANCE NOW DUE \$407.44

**Parker, Hudson, Rainer & Dobbs LLP**

A LIMITED LIABILITY PARTNERSHIP

ATTORNEYS AT LAW  
 1500 MARQUIS TWO TOWER  
 285 PEACHTREE CENTER AVENUE, N.E.  
 ATLANTA, GA 30303  
 (404) 523-5300

EIN: 58-1423485

Invoice Date: 06/30/2015 RLA

Invoice No. 224638

David Boysen  
 3308 S. Eddy  
 Amarillo, TX 79109

Re: Employment Advice  
 (005820/00001C)

FOR PROFESSIONAL SERVICES RENDERED THROUGH: June 30, 2015

**EXPENSES:**

05/27/15	MAY VISA TRJ; BOAVIS; Corporate / UCC	400.00
	Search and Filing Fees; USDC GA	
06/30/15	Postage	7.44
TOTAL EXPENSES		<u>\$407.44</u>

**BILLING SUMMARY:**

Current Total Expenses:	<u>\$407.44</u>
-------------------------	-----------------

CURRENT AMOUNT DUE:	<u>\$407.44</u>
---------------------	-----------------

TOTAL BALANCE NOW DUE	<u><u>\$407.44</u></u>
-----------------------	------------------------

Trust Balance	\$5,000.00
---------------	------------

**Parker, Hudson, Rainer & Dobbs LLP**

A LIMITED LIABILITY PARTNERSHIP

**ATTORNEYS AT LAW  
1500 MARQUIS TWO TOWER  
285 PEACHTREE CENTER AVENUE, N.E.  
ATLANTA, GA 30303  
(404) 523-5300**

EIN: 58-1423485

Invoice Date: 12/31/2015  
Invoice No. 228815  
Client No.: 005820 RLA

David Boysen  
13411 Bradshaw Street  
Apt. 32104  
Overland Park, KS 66213

**Re: Employment Advice  
(005820/00001C)**

**FOR PROFESSIONAL SERVICES RENDERED THROUGH: December 31, 2015**

CURRENT TOTAL EXPENSES \$233.08

**CURRENT AMOUNT DUE:** \$233.08

PREVIOUS BALANCE \$407.44

PAYMENTS APPLIED THROUGH 08/03/2015 (\$407.44)

**TOTAL BALANCE NOW DUE** \$233.08

**Parker, Hudson, Rainer & Dobbs LLP**

A LIMITED LIABILITY PARTNERSHIP

**ATTORNEYS AT LAW**  
**1500 MARQUIS TWO TOWER**  
**285 PEACHTREE CENTER AVENUE, N.E.**  
**ATLANTA, GA 30303**  
**(404) 523-5300**

EIN: 58-1423485

Invoice Date: 12/31/2015 RLA  
 Invoice No. 228815

David Boysen  
 13411 Bradshaw Street  
 Apt. 32104  
 Overland Park, KS 66213

**Re: Employment Advice**  
**(005820/00001C)**

**FOR PROFESSIONAL SERVICES RENDERED THROUGH: December 31, 2015**

**EXPENSES:**

07/31/15	JUDICI, JUDICIAL ATTORNEY SERVICES, INC.; Invoice # 208871; Subponea fees	130.00
10/06/15	MLQ, MLQ ATTORNEY SERVICES - Service of Process; Invoice # 469133; Other professionals	65.00
12/08/15	RLA, R LAWRENCE ASHE JR.; Invoice # EX 12042015 RLA; Out of town travel	3.00
12/31/15	Delivery services/messengers	31.36
12/31/15	Postage	3.72
<b>TOTAL EXPENSES</b>		<b>\$233.08</b>

**BILLING SUMMARY:**

Current Total Expenses: \$233.08

**CURRENT AMOUNT DUE: \$233.08**

PREVIOUS BALANCE \$407.44

PAYMENTS APPLIED THROUGH 08/03/2015 \$407.44

**TOTAL BALANCE NOW DUE \$233.08**

**Trust Balance \$5,000.00**

**Parker, Hudson, Rainer & Dobbs LLP**

A LIMITED LIABILITY PARTNERSHIP

**ATTORNEYS AT LAW  
303 PEACHTREE STREET, N.E.  
SUITE 3600  
ATLANTA, GA 30308  
(404) 523-5300**

EIN: 58-1423485

Invoice Date: 06/30/2016  
Invoice No. 232548  
Client No.: 005820 RLA

David Boysen  
13411 Bradshaw Street  
Apt. 32104  
Overland Park, KS 66213

**Re: Employment Advice  
(005820/00001C)**

**FOR PROFESSIONAL SERVICES RENDERED THROUGH: June 30, 2016**

CURRENT TOTAL EXPENSES \$1,361.30

---

**CURRENT AMOUNT DUE: \$1,361.30**

PREVIOUS BALANCE \$233.08

PAYMENTS APPLIED THROUGH 02/08/2016 (\$233.08)

---

**TOTAL BALANCE NOW DUE \$1,361.30**

---

**Parker, Hudson, Rainer & Dobbs LLP**

A LIMITED LIABILITY PARTNERSHIP

**ATTORNEYS AT LAW**  
**303 PEACHTREE STREET, N.E.**  
**SUITE 3600**  
**ATLANTA, GA 30308**  
**(404) 523-5300**

EIN: 58-1423485

Invoice Date: 06/30/2016 RLA  
 Invoice No. 232548

David Boysen  
 13411 Bradshaw Street  
 Apt. 32104  
 Overland Park, KS 66213

**Re: Employment Advice**  
**(005820/00001C)**

**FOR PROFESSIONAL SERVICES RENDERED THROUGH: June 30, 2016**

**EXPENSES:**

03/30/16	RLA, R LAWRENCE ASHE JR.; Invoice # EX 03242016B RLA; Out of town travel	4.00
06/13/16	SUSBAK, Susan Baker,RMR,CRR; Invoice # 20160043; Trial transcripts	16.20
06/30/16	Copying	157.35
06/30/16	Postage	3.98
06/30/16	RLA, R LAWRENCE ASHE JR.; Invoice # EXP-6/22-6/23; Out of town travel	1,179.77

TOTAL EXPENSES	<u>\$1,361.30</u>
----------------	-------------------

**BILLING SUMMARY:**

Current Total Expenses:	\$1,361.30
-------------------------	------------

<b>CURRENT AMOUNT DUE:</b>	<u><b>\$1,361.30</b></u>
----------------------------	--------------------------

PREVIOUS BALANCE	\$233.08
------------------	----------

PAYMENTS APPLIED THROUGH 02/08/2016	\$233.08
-------------------------------------	----------

<b>TOTAL BALANCE NOW DUE</b>	<u><u><b>\$1,361.30</b></u></u>
------------------------------	---------------------------------

**Trust Balance \$5,000.00**



**CASE NO. 17-13145**

---

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

---

**DAVID L. BOYSEN,**  
*Plaintiff/Appellant,*

**v.**

**ILLINOIS TOOL WORKS INC. SEPARATION PAY PLAN  
AND ILLINOIS TOOL WORKS, INC.,**  
*Defendants/Appellees.*

---

**A DIRECT APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA**

---

**AMENDMENT TO MOTION AND MEMORANDUM IN SUPPORT OF  
APPELLANT'S APPLICATION FOR ATTORNEYS' FEES**

---

**R. Lawrence Ashe, Jr.,  
Georgia Bar No. 024500  
Paul R. Barsness  
Georgia Bar No. 597107  
Julie A. Wood  
Georgia Bar No. 023749  
PARKER, HUDSON, RAINER & DOBBS LLP  
303 Peachtree Street, NE  
Suite 3600  
Atlanta, Georgia 30308  
Tel: 404-523-5300 Fax: 678-533-7766**

*Attorneys for Appellant/Cross-Appellee David L. Boysen*



**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE  
DISCLOSURE STATEMENT**

There are no changes from the Certificate of Interested Persons and  
Corporate Disclosure Statement filed on July 25, 2017.

**AMENDMENT TO CORRECT EXPENSE TOTAL**

Appellant David L. Boysen ("Boysen") hereby amends his motion and memorandum in support of his application for attorneys' fees to correct the total amount of expenses incurred. Mr. Boysen's application identified \$2,001.82 in expenses. The correct amount is \$5,590.49.

The amount in the original application failed to include the expenses that Mr. Boysen paid directly in connection with the deposition of the plan administrator and mediation at the Kinnard Mediation Center. Mr. Boysen respectfully requests that the references to \$2,001.82 in expenses on pages 5, 16, and 21 be amended to \$5,590.49. *See* Second Declaration of R. Lawrence Ashe, Jr. (attached hereto as Exhibit A).

Respectfully submitted, this 2nd day of June, 2019.

**PARKER, HUDSON, RAINER & DOBBS LLP**

By: /s/ R. Lawrence Ashe, Jr.  
R. Lawrence Ashe, Jr.  
Georgia Bar No. 024500  
Paul R. Barsness  
Georgia Bar No. 597107  
Julie A. Wood  
Georgia Bar No. 023749  
303 Peachtree St. NE  
Suite 3600  
Atlanta, GA 30308  
Telephone: 404-523-5300  
Facsimile: 404-522-8409

*Counsel for Appellant/Cross Appellee*

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME  
LIMITATION, TYPEFACE REQUIREMENTS  
AND TYPE STYLE REQUIREMENTS**

This brief complies with the type-volume limitation of Fed. R. App. P. 27(d)(2) because the substance of the brief that was produced using a computer does not contain more than 5,200 words. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in proportionally spaced typeface using Microsoft Office Word 2010 in 14-point Times New Roman type.

By: /s/ R. Lawrence Ashe, Jr.  
R. Lawrence Ashe, Jr.  
Georgia Bar No. 024500

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day filed this **AMENDMENT TO MOTION AND MEMORANDUM IN SUPPORT OF APPELLANT'S APPLICATION FOR ATTORNEYS' FEES** using the Court's CM/ECF system, which automatically sends notification to the parties and counsel of record. A copy of the foregoing **AMENDMENT TO MOTION AND MEMORANDUM IN SUPPORT OF APPELLANT'S APPLICATION FOR ATTORNEYS' FEES** was also sent via U.S. Mail to Appellee's counsel as follows:

Wesley E. Stockard  
Shella B. Neba  
Littler Mendelson, P.C.  
3344 Peachtree Rd., N.E.  
Suite 1500  
Atlanta, Georgia 30326

Dated: July 2nd, 2019

By: /s/ R. Lawrence Ashe, Jr.  
R. Lawrence Ashe, Jr.

## **EXHIBIT A**

**CASE NO. 17-13145**

---

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

---

**DAVID L. BOYSEN,**

*Plaintiff/Appellant,*

**v.**

**ILLINOIS TOOL WORKS INC. SEPARATION PAY PLAN**

**AND ILLINOIS TOOL WORKS, INC.,**

*Defendants/Appellees.*

---

**A DIRECT APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA**

---

---

**SECOND DECLARATION OF R. LAWRENCE ASHE, JR.**

---



**DECLARATION OF R. LAWRENCE ASHE, JR.**

I, R. Lawrence Ashe, Jr. do hereby affirm:

1. I am over the age of 18 and am competent to give this Declaration. I make this declaration in support of Mr. Boysen's Amendment to Motion for Attorney's Fees and Costs as required by 11th Cir. R. 39-2. All statements in this declaration are made based upon my personal knowledge and review of our itemized statements of attorney's fees in this case and certain costs paid directly by Mr. Boysen.

2. Exhibit 6 to my original declaration contained the invoices and summary of expenses paid by my firm (a total of \$2,001.82) for which Mr. Boysen seeks recovery.


3. Exhibit 6 to my original declaration did not include the invoices and summary of expenses *paid by Mr. Boysen directly*. Attached to this second declaration as Exhibit 7 are the invoices and summary of expenses paid by Mr. Boysen (a total of \$3,588.67) for which Mr. Boysen seeks recovery.

4. Based upon my professional experience, my practice as an attorney, and my familiarity with expenses charged for ERISA litigation, I certify my opinion that the litigation expenses paid directly by Mr. Boysen in connection with the deposition of the plan administrator and participation in the Kinnard Center Mediation were reasonably necessary to the preparation, presentation and prosecution of this case.

5. With this correction, Boysen requests that the Court award him a total of \$318,961.50 for fees and \$5,590.49 in expenses.

6. The facts set forth in this declaration are correct to the best of my knowledge, information and belief.

I declare under the penalty of perjury under the laws of the United States, pursuant to 28 U.S.C. § 1746, that the foregoing is correct and based upon my knowledge, information, experience and belief, as well as my review of the aforementioned documents.

Witnessed this 2<sup>nd</sup> day of February, 2019  
  
Cathryn R. Creel  
Notary Public  
My commission expires:  
March 9, 2021

  
R. Lawrence Ashe, Jr.

## **EXHIBIT 7**

6/22/2019

Gmail - E-Ticket Confirmation-HKMPXH 22JUN

②

Gmail

David Boysen &lt;boydav6@gmail.com&gt;

**E-Ticket Confirmation-HKMPXH 22JUN**

1 message

American Airlines@aa.com <notify@aa.globalnotifications.com>  
 To: "BOYDAV6@GMAIL.COM" <BOYDAV6@gmail.com>

Mon, Jun 6, 2016 at 7:23 AM

American Airlines

E-Ticket Confirmation  
 E-Ticket Confirmation



Ticket Issued: Jun 6, 2016

Thank you for choosing American Airlines / American Eagle, a member of the oneworld® Alliance. Below are your itinerary and receipt for the ticket(s) purchased. Please print and retain this document for use throughout your trip.

You may check in and obtain your boarding pass for U.S. domestic electronic tickets within 24 hours of your flight time online at [aa.com](#) by using [aa.com](#) or at a Self-Service Check-In machine at the airport. Check-in options may be found at [aa.com](#). For information regarding American Airlines checked baggage policies, please visit [aa.com/baggage](#).

To receive updated flight status notifications, please visit [aa.com/flightstatus](#).

For faster check-in at the airport, scan the barcode below at any AA Self-Service machine.

You must present a government-issued photo ID and either your boarding pass or a priority verification card at the security screening checkpoint.

You can now [purchase additional items](#) on [aa.com](#), where you can check in and purchase additional items to customize your journey. A variety of seating options are also available for purchase to enhance your travel with features such as convenient front of cabin location, extra legroom and early boarding.

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Citi AAdvantage

Get 10,000 bonus miles  
 when you activate a new Citi AAdvantage card.

Up to 35% off plus 500  
 AAdvantage® bonus miles.

AVIS Budget

Activate a new Sprint account  
 and earn up to 25,000 miles.  
 Sign up for this offer today at  
[sprint.com/AAAdvantage](#).



6/22/2019

Case: 17-13145 Date Filed: 07/02/2019 Page: 12 of 20

Gmail - E-Ticket Confirmation-HKMPXH 22JUN

Record  
Locator

HKMPXH



3

Carrier	Flight #	Departing	Arriving	Fare Code
American Airlines	4398	KANSAS CITY INTL WED 22JUN 7:25 PM	CHICAGO OHARE 9:04 PM	V
OPERATED BY REPUBLIC AIRLINES AS AMERICAN EAGLE				
David Boysen	Seat 10C	Economy	FF#: 0515WY8 PLT	
American Airlines	4383	CHICAGO OHARE THU 23JUN 8:25 PM	KANSAS CITY INTL 9:59 PM	W
OPERATED BY REPUBLIC AIRLINES AS AMERICAN EAGLE				
David Boysen	Seat 10C	Economy	FF#: 0515WY8 PLT	

Passenger	Ticket #	Fare-USD	Taxes and Carrier-Imposed Fees	Ticket Total
David Boysen	0012376223114	370.23	55.97	426.20

**Baggage Information**

Baggage charges for your itinerary will be governed by American Airlines BAG ALLOWANCE -MCIORD-No free checked bags/ American Airlines BAG ALLOWANCE -ORDMCI-No free checked bags/ American Airlines 1STCHECKED BAG FEE-MCIORD-USD0.00/ American Airlines /UP TO 50 LB/23 KG AND UP TO 62 LINEAR IN/158 LINEAR CM 1STCHECKED BAG FEE-ORDMCI-USD0.00/ American Airlines /UP TO 50 LB/23 KG AND UP TO 62 LINEAR IN/158 LINEAR CM 2NDCHECKED BAG FEE-MCIORD-USD0.00/ American Airlines /UP TO 50 LB/23 KG AND UP TO 62 LINEAR IN/158 LINEAR CM 2NDCHECKED BAG FEE-ORDMCI-USD0.00/ American Airlines /UP TO 50 LB/23 KG AND UP TO 62 LINEAR IN/158 LINEAR CM ADDITIONAL ALLOWANCES AND/OR DISCOUNTS MAY APPLY

You have purchased a NON-REFUNDABLE fare. The itinerary must be canceled before the ticketed departure time of the first unused coupon or the ticket has no value. If the fare allows changes, a fee may be assessed for changes and restrictions may apply.

You have 24 hours to cancel your trip for a full refund if you booked at least 7 days prior to departure. You must cancel your trip before requesting a refund. To cancel your trip, on or . For our refund policy and to request a refund, go to

Some everyday products, like e-cigarettes and aerosol spray starch, can be dangerous when transported on the aircraft in carry-on and/or checked baggage. Changes in temperature or pressure can cause some items to leak, generate toxic fumes or start a fire. Carriage of prohibited items may result in fines or in certain cases imprisonment. Please ensure there are no forbidden hazardous materials in your baggage like:

Some Lithium batteries (e.g. spares in checked baggage, batteries over a certain size), Explosives / Fireworks, Strike anywhere matches/ Lighter



O'HARE INTL AIRPORT  
CHICAGO, IL 60666  
United States of America  
TELEPHONE 773-686-8000 • FAX 773-601-2873  
Reservations  
www.hilton.com or 1 800 HILTONS

BOYSEN, DAVID

Room No: 8083/K1  
Arrival Date: 6/22/2016 7:04:00 PM  
Departure Date: 6/23/2016 8:04:00 AM  
Adult/Child: 1/0  
Cashier ID: JGABRIC/JASMINA  
Room Rate: 259.00  
AL:  
HH # 624370207 BLUE  
VAT #  
Folio No/Che 4009685 A

PARKER, HUDSON, RAINER & DOBBS  
303 PEACHTREE ST NE #3600  
ATLANTA GA 30303  
UNITED STATES OF AMERICA

Confirmation Number: 3261318146

HILTON CHICAGO O'HARE AIRPORT 6/23/2016 8:03:00 AM

DATE	DESCRIPTION	ID	REF NO	CHARGES	CREDIT	BALANCE
6/22/2016	GUEST ROOM	GPREZ	13853778	\$259.00		
6/22/2016	OCCUPANCY TAX-STATE	GPREZ	13853778	\$30.82		
6/22/2016	OCCUPANCY TAX-CITY	GPREZ	13853778	\$11.66		
6/22/2016	OCCUPANCY TAX-COUNTY	GPREZ	13853778	\$2.59		
6/23/2016	MC *9545	JGABRIC	13854464		(\$304.07)	
**BALANCE**						\$0.00

EXPENSE REPORT  
SUMMARY

	6/22/2016	STAY TOTAL
ROOM AND TAX	\$304.07	\$304.07
DAILY TOTAL	\$304.07	\$304.07

You have earned approximately 2590 Hilton HHonors points for this stay. Hilton HHonors(R) stays are posted within 72 hours of checkout. To check your earnings or book your next stay at more than 3,900

Thank you for choosing Hilton. You'll get more when you book directly with us - more destinations, more points, and more value. Book your next stay at hilton.com.

## CREDIT CARD DETAIL

APPR CODE	92268P	MERCHANT ID	000100682400
CARD NUMBER	MC *9545	EXP DATE	07/19
TRANSACTION ID	13854464	TRANS TYPE	Sale



**PARKER HUDSON RAINER DOBBS LLP**  
**TRAVEL AND EXPENSE FORM - 2016**



Cardholder or  
reimbursee: RLA

Today's date: 7/6/2016

Client/Matter # 5820.1 (Boysen/ITW)

Purpose of trip/expenditures: Deposition

Date of expense	Vendor & Description (please attach receipts for all transactions)	Charged to firm card	To be reimbursed
6/23/2016	Hilton Chicago O'Hare (conference room)		\$ 527.50
6/22 - 6/23	Hilton Hotel Fare		\$ 320.07
6/22 - 6/23	Delta Air Fare		\$ 322.20
6/22 - 6/23	Misc. Tips		\$ 10.00

Enter number of miles:

at \$.54 per mile =

\$ -

**TOTALS**

\$ - \$ 1,179.77

Partner/supervisor approval: \_\_\_\_\_

Notes for accounting:

5

ELIZABETH S. GARNSEY

DIRECT DIAL  
(404) 420-4306  
TELECOPIER  
(678) 533-7701  
esc@phrd.com



LIMITED LIABILITY PARTNERSHIP  
ATTORNEYS AT LAW

OFFICES IN  
ATLANTA, GEORGIA  
TALLAHASSEE, FLORIDA

August 1, 2016

FIRST-CLASS MAIL

Mr. David L. Boysen  
13411 Bradshaw Street  
Apartment 32104  
Overland Park, KS 66213

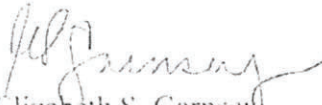
Re: Forward Check No. 5044 – David L. Boysen  
(5820.1.RLA)

Dear Mr. Boysen:

The above referenced check is being forwarded, as your account has been paid  
(MasterCard - David Boysen - 02789P) posting on the 22nd of July 2016.

Please let me know if you have any questions.

Very truly yours,

  
Elizabeth S. Garnsey

Ese

Enclosure

7

DAVID L BOYSEN  
17501 WHITE WING RD (808) 433-6309  
CANYON, TX 78015

5044

40-7/1011 KS  
7772

July 7, 2016

Parker Hudson Ranch Pkwy \$1179.74  
One thousand one hundred seventy nine dollars and 74/100

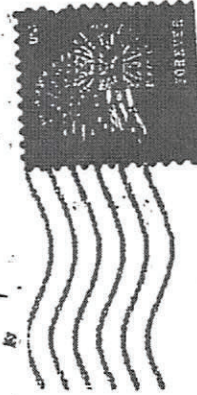
Bank of America

ACH RPT 101100045

L Alys Truitt Rembert

1:10110000451: 0051801495802115044

Approved Clerk



DES MOINES IA 500

07 JUL 2016 PM 11

David Boyesen

13411 Broadshow St

Pgt 32104

Overland Park, KS 66213

Parker Hudson Ranch & Dobbs

303 Pachtree Street NE

Suits 3600

Atlanta GA 30308

PHN:

Robin

McMurry



LISA A. KOTRBA &amp; ASSOCIATES, LTD.

P.O. Box 1557

Plainfield, Illinois 60544

**Invoice**

DATE	INVOICE #
7/17/2016	17756

BILL TO
Parker Hudson Rainer & Dobbs 303 Peachtree Street, N.E. Suite 3600 Atlanta, Georgia 30308

REPORTER
LAK
ATTORNEY
Lawrence Ashe

DESCRIPTION	PAGES	AMOUNT
David Boysen vs. Illinois Tool Works  No. 1:15-CV-01900-TWT  6/23/16  Video Deposition of Elliott Goldman 6.0 hours attendance E-Transcript P&H	253	1,012.00 390.00 30.00 10.00
FEIN 36-3693148 Thank you for your business.	TERMS Due upon Receipt	<b>Total</b> \$1,442.00

Phone #	Fax #	E-mail
312-855-1834	855-814-0291	KOTRBA.L@comcast.net



6/22/2019

Case: 17-13145 Date Filed: 02/04/2020 Page: 18 of 20

Gmail - Flight reservation (J9S8LN) | 09OCT17 | MCI-ATL | Boysen/David Lynn

Gmail

David Boysen &lt;boydav6@gmail.com&gt;

**Flight reservation (J9S8LN) | 09OCT17 | MCI-ATL | Boysen/David Lynn**

1 message

Southwest Airlines <SouthwestAirlines@luv.southwest.com>  
 Reply-To: Southwest Airlines <reply@wnco.com>  
 To: boydav6@gmail.com

Tue, Sep 12, 2017 at 8:16 AM

Thanks for choosing Southwest® for your trip.

Southwest

**Ready for takeoff!**

Thanks for choosing Southwest® for your trip. You'll find everything you need to know about your reservation below. Happy travels!

**AIR Confirmation:**

Confirmation Date: 09/12/2017

Passenger(s)	Rapid Rewards #	Ticket #	Expiration	Est. Points Earned
BOYSEN/DAVID LY NN	224024570	5268763245934	Sep 12, 2018	758

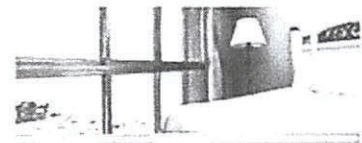
Rapid Rewards points earned are only estimates. Visit your (MySouthwest, Southwest.com or Rapid Rewards) account for the most accurate totals - including A-List & A-List Preferred bonus points.

Date	Flight	Departure/Arrival
Mon Oct 9	571	Depart <b>KANSAS CITY, MO (MCI)</b> on Southwest Airlines at <b>06:25 PM</b> Arrive in <b>ATLANTA, GA (ATL)</b> at <b>09:20 PM</b> Travel Time 1 hrs 55 mins

Date	Flight	Departure/Arrival
Tue Oct 10	4623	Depart <b>ATLANTA, GA (ATL)</b> on Southwest Airlines at <b>10:00 PM</b> Arrive in <b>KANSAS CITY, MO (MCI)</b> at <b>11:10 PM</b> Travel Time 2 hrs 10 mins

**Check in for your flight(s):** 24 hours before your trip on your mobile device to secure your boarding position. You'll be assigned a boarding position based on your check-in time. The earlier you check in within 24 hours of your flight, the earlier you get to board.

**Bags fly free®:** First and second checked bags.  
 . One small bag and one personal item are permitted as

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 per flight

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 check in online



6/22/2019

Case: 17-13145 Date Filed: 02/04/2020 Page: 19 of 20

Email: Flight reservation (J9S8LN) | USOC H7 | MCI-ATL | Boysen/David Lynn

items, free of charge.

**30 minutes before departure:** We encourage you to arrive in the gate area no later than 30 minutes prior to your flight's scheduled departure as we may begin boarding as early as 30 minutes before your flight.

**10 minutes before departure:** You must obtain your boarding pass(es) and be in the gate area for boarding at least 10 minutes prior to your flight's scheduled departure time. If not, Southwest may cancel your reserved space and you will not be eligible for denied boarding compensation.

**If you do not plan to travel on your flight:** In accordance with Southwest's No Show Policy, you must notify Southwest at least 10 minutes prior to your flight's scheduled departure if you do not plan to travel on your flight. Customers who fail to cancel reservations for a Wanna Get Away fare segment at least ten (10) minutes prior to travel and who do not board the flight will be considered a no show, and all remaining unused Wanna Get Away funds will be forfeited. All remaining unused Business Select and Anytime funds will be converted to reusable travel funds. If you no show your reward travel reservation, the points will be redeposited to the purchaser's Rapid Rewards account. Any taxes and fees associated with your reward travel reservation will be held for future use in the form of reusable travel funds under the name of the traveler(s).

Need to make a change? Keep your confirmation number on record. It will be used to retrieve your reservation and apply funds to future travel.

Air Cost: 163.96

Fare Rule(s): 5268763245934; NONREF/NONTRANSFERABLE STANDBY REQ UPGRADE TO Y -BG WN

Valid only on Southwest Airlines. All travel involving funds from this Confirmation Number must be completed by the expiration date. Unused travel funds may only be applied toward the purchase of future travel for the individual named on the ticket. Any changes to this itinerary may result in a fare increase. Failure to cancel reservations for a Wanna Get Away fare segment at least 10 minutes prior to travel will result in the forfeiture of all remaining unused funds.

MKC WN ATL63.05WN MKC63.05USD126.10END ZP MCI4.10ATL4.10 XF MCI4.5ATL4.5

## Cost and Payment Summary

### AIR -

Base Fare	\$ 126.10
Excise Taxes	\$ 9.46
September 11th Security Fee	\$ 11.20
Segment Fee	\$ 8.20
Passenger Facility Charge	\$ 9.00
<b>Total Air Cost</b>	<b>\$ 163.96</b>

### Payment Information

Payment Type: Mastercard XXXXXXXXXXXX1579  
Date: Sep 12, 2017  
Payment Amount: \$163.96

[Check In Online](#)
[In the Airport](#)
[Traveling with Children](#)





*National*

Rental Agreement # 338732229

Invoice # 30031664451

## Renter Information

### Renter Name

DAVID LYNN BOYSEN

### Renter Address

13411 BRADSHAW ST APT 32104  
OVERLOOK PARK, KS 66213  
USA

### Contract

WATCO COMPANIES INC

### Rental Credits

1 credit has been awarded for this rental

## Vehicle Information

### CAMRY 4D LE

License #: CGZ2971

State/Province: GA

### Vehicle Class Driven

Full Size 4-Door/Automatic/Air

### Vehicle Class Charged

Intermediate 2 or 4-Door/Automatic/Air

### Odometer Mileage/Kilometers

Starting: 5,694 Ending: 5,765

Total: 71

## Trip Information

### Pickup

Mon, Oct 09 2017 11:34 P.M.  
ATLANTA INTL ARPT (ATL)  
2200 RENTAL CAR CNTR PKWY  
#2250  
COLLEGE PARK, GA 30337  
USA

### Return

Tue, Oct 10 2017 8:30 P.M.  
ATLANTA INTL ARPT (ATL)  
2200 RENTAL CAR CNTR PKWY  
#2250  
COLLEGE PARK, GA 30337  
USA

## Rental Charges

<b>Rental Rate</b>	Time & Distance 1 Day at \$53.00 / Day	\$53.00
<b>Mileage</b>	Unlimited Mileage	Included
<b>Taxes and Fees</b>	Concession Fee Recovery 11.11 Pct (11.11%)	\$6.11
	Rental Excise Tax 3 Pct (3.00%)	\$1.83
	Customer Facility Charge 5.00/day (\$5.00 / Day)	\$5.00
	Sales Tax (7.75%)	\$4.74
	Vlf Rec 1.99/day (\$1.99 / Day)	\$1.99
<b>Total</b>		<b>\$72.67</b>
	(Subject to audit)	
	Amount charged on Oct 10 2017 to MASTERCARD (1579)	(\$72.67)
<b>Amount Due</b>		<b>\$0.00</b>

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Questions or send us a secured message  
by visiting our

**UNITED STATES COURT OF APPEALS  
ELEVENTH CIRCUIT**

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**No. 17-13145-FF**

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**DAVID BOYSEN,**

**Appellant,**

**v.**

**ILLINOIS TOOL WORKS INC. SEPARATION PAY  
PLAN, and ILLINOIS TOOL WORKS INC.,**

**Appellees.**

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**On Appeal from the United States District Court  
For the Northern District of Georgia  
Atlanta Division  
Civil Action No. 1:15-CV-01900-TWT**

---

**OBJECTIONS TO APPELLANT'S MOTION AND  
MEMORANDUM OF LAW IN SUPPORT OF  
APPLICATION FOR ATTORNEYS' FEES**

---

**Wesley E. Stockard  
Georgia Bar No. 159090  
LITTLER MENDELSON, P.C.  
3344 Peachtree Road N.E.,  
Suite 1500  
Atlanta, GA 30326.4803  
404.233.0330  
Attorneys for Appellees**

CERTIFICATE OF INTERESTED PERSONS

Pursuant to Federal Rule of Appellate Procedure 26.1 and Circuit Rule 26.1-1, Appellees/Cross-Appellants Illinois Tool Works Inc. Separation Pay Plan (the “Plan”) and Illinois Tool Works Inc. (together, “ITW” or “Defendants”), certify that the following is a complete list of persons and entities who have or may have an interest in the outcome of this case:

1. Boysen, David L., Boysen
2. Illinois Tool Works Inc., Appellee
3. Illinois Tool Works Inc. Separation Pay Plan, Appellee
4. Littler Mendelson, P.C., Law Firm for Appellees
5. Stockard, Wesley E., Counsel for Appellees
6. Parker, Hudson, Rainer & Dobbs LLP, Law Firm for Boysen
7. Ashe, Jr., R. Lawrence, Counsel for Boysen
8. Barsness, Paul R., Counsel for Boysen
9. Wood, Julie A., Counsel for Boysen
10. Thrash, Jr. Thomas W., United States District Court Judge

/s/ Wesley E. Stockard

Wesley E. Stockard

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## INTRODUCTION

Appellant, David Boysen, filed a single claim for severance benefits of \$44,590.13 from the Plan, which provides such benefits if an employee loses their employment “due to a permanent job elimination.” (ITW at 5, § 2.1(a).)<sup>1</sup> After conducting multiple witness interviews, after amassing 12 categories of information showing that ITW terminated Boysen for poor performance and replaced him, and after inviting Boysen to provide contrary evidence – *and after Boysen did not respond* – the plan administrator denied the claim because Boysen was “terminated for reasons other than the elimination of [his] job[.]” (*Id.* at 50, 69, 79, 83-98 104-106, 145-109, 115-116 160-229; Dkt. No. 38-2, pp. 33-34, ¶15.)

Boysen sued and in discovery ITW produced a single undated document referencing “Business Structure Simplification,” which explained that ITW planned to phase out the General Manager *title*, but that General Managers would be “grandfathered” or their duties “mapped to a Business Unit Manager.” (ITW 00596.) But Boysen did not rely on that or *any* documents produced during discovery in opposing summary judgment, which the district court granted in favor of the Plan because the “documentary record is absolutely clear that the Plaintiff was fired for poor performance.” (Dkt. No. 67, p. 18.)

---

<sup>1</sup> Citations beginning with “ITW” are to the administrative record for Boysen’s claim for benefits filed in full with the District Court. (*See* Dkt. No. 36.)

On appeal, this Court reversed summary judgment and remanded for further review. This Court's Opinion focused on the single "Business Structure Simplification" document, despite noting that it does not "definitively support[] any party's position[.]" (Opinion, p. 26.) This Court found that the administrator should have done more to inquire about "purported restructuring" and to consider arguments about Boysen's performance, but also that "ITW and the Plan may well be proven right after additional investigation and review." (Opinion, p. 25-27.) Having recovered not even a penny of severance benefits, Boysen now seeks **\$318,961.50** in attorneys' fees based on this Court's findings.

If there were ever an instance where the Court should deny fees, this is such a case. This is precisely why courts are granted discretion over fee awards in ERISA cases – to avoid outcomes like this one where a party obtains a technical, procedural victory, yet seeks to be exorbitantly rewarded to the tune of *seven times the value of the claim* for dragging out litigation for little to no benefit on their actual claim. The Court should exercise its discretion to deny Boysen's unwarranted fee request from a Plan that diligently reviewed his claim even though, in hindsight, it was determined that more review (which may be of little use to Boysen) should occur.

### **ARGUMENT AND AUTHORITIES**

- I. The Court Should Deny Boysen's Request for Fees Because the District Court Should Address that Request After it is Determined Whether he has Obtained Success on the Merits.**

**A. Boysen Is Not Entitled To An Award Of Attorneys' Fees as he has Not Yet Obtained "Success On The Merits."**

Under ERISA, a court has discretion to award fees only if the fee claimant "has achieved 'some degree of success on the merits.'" *Hardt v. Reliance Standard Life Ins. Co.*, 560 U.S. 242, 245 (2010) (citations omitted). A claimant "does not satisfy the requirement by achieving 'trivial success on the merits' or a 'purely procedural victory.'" *Id.* (citations omitted). Nor is there requisite "success" if it would require "a lengthy inquiry into the question of whether [the] party's success was 'substantial' or occurred on a 'central issue.'" *Id.* (citations omitted.)

In *Hardt*, the plaintiff achieved success on the merits because the court "found 'compelling evidence that Ms. Hardt is totally disabled . . .'" and stated it was "inclined to rule in Ms. Hardt's favor" on her benefits claim[.]" *Id.* at 256. The plaintiff also obtained a remand to the plan administrator who reversed and awarded her benefits. *Id.* at 242. Similarly, in Boysen's cited authority, the claimant achieved a remand to the plan *plus* some other substantive benefit sufficient to constitute "success on the merits." For example, in *Gross v. Sun Life Assurance Company of Canada*, the court noted sufficient evidence was submitted that would "prove entitlement to disability benefits" if credited, *and* adopted a new standard of review that substantively "increased the likelihood of a favorable benefits determination" which, "strengthened [the] claim[.]" 763 F.3d 73, 79 (1st Cir. 2014).

This case does not involve a remand to the plan administrator *plus* a benefit

award or some other substantive success or increased likelihood of Boysen's success on the merits. Here, this Court noted that even on further review it is equally probable Boysen's claim will fail. (Opinion, p. 26) ("ITW and the Plan may well be proven right after additional investigation and review.") Nor has there been a substantive ruling that alters the dynamic between the parties, affects the standard of review in a manner beneficial to Boysen<sup>2</sup>, or otherwise signifies that Boysen is more likely to prevail on the merits. *Contra Gross*, 763 F.3d at 79. In his Complaint, Boysen requested: (1) "a finding and judgment that Defendants' denial of benefits was arbitrary and capricious"; and (2) an "award of at least \$44,590.13 for unpaid severance pay benefits[.]"<sup>3</sup> (Dkt. No. 1.) Boysen has obtained neither. Instead, all Boysen has obtained is a purely procedural victory where further evidence may be sought and, if found, reviewed in further evaluation of his claim.<sup>4</sup> This does not

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<sup>2</sup> While the Court used a *de novo* standard to review the procedural aspects of Boysen's claim (whether he received a full and fair review), this standard does not amount to a "success" for Boysen as it provides no substantive benefit, does not reflect a *change* in the dynamic between the parties (indeed the Plan did not contest this standard of review), and is only an extension of prior Eleventh Circuit precedent. Oral Argument, Aug. 16, 2018 at 13:13; (Opinion, p. 15-16); *see also Capone v. Aetna Life Ins. Co.*, 592 F.3d 1189, 1199-1200 (11th Cir. 2010). Boysen did not even brief this issue and declined to answer questions about it during oral argument. (*See generally* Opening Br.; Oral Argument, Aug. 16, 2018 at 12:06.)

<sup>3</sup> In support of his benefits claim, Boysen argued the Plan failed to provide a full and fair review "by failing and refusing to disclose to Plaintiff what evidence the Plan relied upon in reaching its final decision." (Dkt. No. 1, ¶¶ 35, 36.) No court agreed.

<sup>4</sup> Here Boysen has not even achieved a remand to the plan administrator. That decision rests with the district court. (Opinion, p. 26.)



constitute success *on the merits*.<sup>5</sup> See *Vivas v. Hartford Life and Accident Ins. Co.*, 2013 WL 5226720 at \*3 (S.D. Fla. June 17, 2013) (remand to the plan administrator “is a purely procedural victory that does not rise to *Hardt*’s standard requiring a finding of ‘some success on the merits’[.]”); accord *Salvatori v. Westinghouse Elec. Corp.*, 190 F.3d 1244, 1245 (11th Cir. 1999) (claimant not entitled to attorney’s fees where he “has achieved some success on the merits of his claim but has not obtained a judgment, either in the form of damages or equitable relief that the court may enforce”). Consequently, an award of fees is premature.

**B. Nothing in the Eleventh Circuit Rules Renders Boysen’s Premature Fees Request Somehow Procedurally Appropriate.**

While Boysen argues that Rule 39-2 applies such that he may seek fees in this Court, the Rule requires an applicant show he is “legally entitled” to fees after this Court’s Opinion, which is not the case here. Boysen has not yet obtained “success on the merits” as required for fees under ERISA. Compare 11th Cir. R. 39-2(b).

Further, a fee award at this juncture by the Eleventh Circuit would be inconsistent with the Supreme Court’s holding in *Perkins v. Standard Oil Co. of California*, 399 U.S. 222 (1970), where the Supreme Court stated that, as a general rule, any award of fees should be fixed in the first instance by the district court after

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<sup>5</sup> At a minimum, to determine whether Boysen achieved success on the merits would require a lengthy inquiry into whether such success was substantial or relates to a central issue. Under *Hardt*, if such inquiry is required, there is no success and no right to fees. 560 U.S. at 255.

hearing evidence as to the extent and nature of the services rendered. *Id.* at 223 (citation omitted). Boysen has not offered any valid justification for departing from this general rule, nor does it make sense to do so here where Boysen's fee claim involves analysis of the *Hardt* factors – a circumstance this Court has repeatedly recognized is within the district court's expertise.<sup>6</sup> See, e.g., *Finch v. City of Vernon*, 877 F.2d 1497, 1508 (11th Cir. 1989) (remanding fee issue to district court, noting “[w]e lack the information from which we can determine a reasonable attorney's fee”); *O'Donnell v. Georgia Osteopathic Hosp., Inc.*, 748 F.2d 1543, 1553 (11th Cir. 1984) (remanding fee issue to district court); *Varner v. Century Fin. Co.*, 738 F.2d 1143, 1149 (11th Cir. 1984) (same). The normal process of allowing the district court to make an initial fee determination should be followed here. *Bishop v. Osborn Transp. Inc.*, 687 F. Supp. 1526, 1528 (N.D. Ala. 1988) (citing *Perkins*, 399 U.S. at 233) (same); see also *Stone v. City of Wichita Falls*, 668 F.2d 233, 233 (5th Cir. 1982) (citation omitted) (“Whether attorney's fees should be awarded and, if so, the amount to be allowed are matters that should normally be determined in the first instance by a trial court, subject of course to appellate review.”).<sup>7</sup>

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<sup>6</sup> As Boysen seeks fees related to work performed at all levels of the litigation (including, improperly, for work done in the claim proceedings before the plan administrator), it is misleading to contend that the Eleventh Circuit has some sort of expertise as to the work performed, as it did not “personally witness” any of the proceedings that occurred below. (*Compare Fees Brief* at 5.)

<sup>7</sup> Fifth Circuit decisions rendered before October 1, 1981 are binding in the Eleventh Circuit. *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc).

## **II. Even if Boysen's Fee Request Were Properly Before the Court, the Court Should Exercise its Discretion to Deny Fees.**

Even assuming, *arguendo*, Boysen achieved success on the merits and this Court was the proper forum to determine the appropriateness of fees, the Court should exercise its discretion to deny Boysen's request. Under ERISA, the "law provides no presumption in favor of granting attorney's fees to a prevailing claimant[.]" *Freeman v. Continental Ins. Co.*, 996 F.2d 1116, 1119 (11th Cir. 1993). Instead, ERISA "allows for attorney's fees . . . in accordance with the district court's discretion." *McKnight v. S. Life and Health Ins. Co.*, 758 F.2d 1566, 1572 (11th Cir. 1985). To evaluate a fee request, the Court may consider not only the *Hardt* factors<sup>8</sup>, but any relevant considerations. *See Plumbers & Steamfitters Local No. 150 Pension Fund v. Vertex Constr. Co., Inc.*, 932 F.2d 1443, 1452 (11th Cir. 1991). And, to allow appropriate evaluation of the total circumstances, court discretion in deciding an ERISA fee award is broad. *First Nat. Life Ins. Co. v. Sunshine-Jr. Food Stores, Inc.*, 960 F.2d 1546, 1554 (11th Cir. 1992) (court has "broad range of discretion" as to ERISA fees). Here, the relevant factors and case history support denial of fees.

### **A. There is no Evidence the Plan or ITW Acted in Bad Faith.**

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<sup>8</sup> The *Hardt* factors include: (1) the degree of the parties' culpability or bad faith; (2) the ability to satisfy a fee award; (3) the potential deterrent effect of a fee award on others "acting under similar circumstances"; (4) whether the party seeking fees "sought to benefit all participants and beneficiaries of an ERISA plan or to resolve a significant legal question regarding ERISA itself; and (5) the relative merits of the parties' positions." *Hardt*, 560 U.S. at 249 n.1.

There is no evidence of any bad faith in this case. A showing of bad faith requires “more than mere negligence; it is ‘the conscious doing of a wrong.’” *Cross v. Quality Mgmt. Grp., LLC*, 491 F. App’x 53, 56 (11th Cir. 2012) (citations omitted). Here, the plan administrator investigated Boysen’s claim by gathering and reviewing substantial amounts of relevant information, including:

1. the job posting for Boysen’s replacement (Ken Caskey);
2. the offer letter extending the job to Boysen’s replacement;
3. the job description for Boysen’s replacement;
4. internal documents showing Boysen’s job responsibilities while working as manager of the ITWCC Group;
5. internal documents showing that Boysen’s replacement reported to the same supervisor (Monte Hammouri) as Boysen;
6. internal documents reflecting that Boysen’s replacement had to relocate to Kennesaw, Georgia, the same place Boysen worked;
7. internal documents referring to Boysen’s position as the “GM/BUM” position – standing for “General Manager/Business Unit Manager”;
8. succession planning documents in which Boysen identified Caskey as his likely successor for the ITWCC Manager position;
9. an internal memorandum announcing Caskey’s assumption of the ITWCC managerial responsibilities;
10. internal documents reflecting the performance management process (including emails, notes and a Performance Improvement Plan) leading up to Boysen’s termination for poor performance;
11. ITW’s separation records identifying the reason for Boysen’s termination as poor job performance; and
12. a separation agreement offered to Boysen that identified the reason for his termination as poor performance.

(ITW at 50, 69, 79, 104-106, 145-109, 160-229.) The administrator also interviewed three individuals most likely to have information about restructuring possibly

impacting Boysen's position.<sup>9</sup> All this evidence uniformly showed ITW terminated Boysen and filled his job – his job was not eliminated. The administrator also sent Boysen the documents reviewed, explained his understanding that Boysen's duties transitioned to his replacement, and invited Boysen to submit any evidence showing his job was eliminated. (ITW 00115-116.) ***Boysen never responded to the evidence and findings – not even to say he disagreed with them.*** (Dkt. No. 97 at 11.) Hearing no disagreement, the administrator upheld the denial of benefits. (ITW 00152.)

Further, each time Boysen identified information, the plan administrator made an unquestionably reasoned response. When Boysen made a general request for “a restructuring document” about a company-wide title change, the identity of all General Managers, and financial information about various business units, the administrator explained that company-wide title issues were not relevant to job elimination, as “[j]ust because there may be a different title does not mean there is a job elimination.” (ITW 00115-116.) He also explained that the identity of all General Managers and financial information of Boysen's replacement or other business units was not relevant to whether Boysen experienced a job elimination.

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<sup>9</sup> (1) Monte Hammouri, Boysen's former supervisor, who also supervised his replacement and who is the very individual Boysen claims created the “restructuring plan” that eliminated his job; (2) Group Human Resources Director Cheryl Lewis who was responsible for personnel matters in Boysen's unit; and (3) Platform Human Resources Director Sheri Goldstein, who reported to Ms. Lewis. (Dkt. No. 38-2, p. 33-34 ¶ 15.)

(*Id.*) Boysen offered no rebuttal. (Dkt. No. 97 at 11.)

Additionally, there is *still* no indication any restructuring documents exist that demonstrate Boysen's position was eliminated, thus the administrator did not consciously disregarded relevant evidence offered to him. The "Business Structure Simplification" document referenced in the Court's Opinion included an explanation that ITW intended to phase out the General Manager *title*, but that General Managers, instead of being eliminated, would either be "grandfathered" or their duties "mapped to a Business Unit Manager" (ITW 00596). This is perfectly consistent with the administrator's position that "[j]ust because there may be a different title does not mean there is a job elimination." (ITW 00115-116.) Nor does this document rebut the other evidence gathered showing Plaintiff's discharge for poor performance and that ITW replaced him and filled his job. (Dkt. No. 67, p. 18.)

That detailed and measured process the administrator took to review Boysen's claim as outlined above cannot be construed as bad faith. This is not a case in which the Plan ignored claimant's theory or failed to compile a significant record supporting its decision. *Contra Gaeth v. Hartford Life Ins. Co.*, 538 F.3d 524, 530 (6th Cir. 2008) (finding ERISA plan culpable, yet denying fees, where there was little to no support in the record or a reasoned explanation for decision). To the contrary, the Plan gathered and evaluated voluminous information, and the decision not to seek additional information, given the evidence already compiled supporting



denial, does not demonstrate a “conscious doing of a wrong” sufficient to constitute bad faith. *See Freeman*, 996 F.2d at 1120 (the plausibility of a plan’s grounds for its determinations shows lack of bad faith). The administrator’s decision was grounded in reason and the evidence before him, and he even explained it to Boysen with no rebuttal. *Contra Gross*, 763 F.3d at 83 (fee award appropriate where the plan relied on evidence it knew was founded on incomplete information); *contra Slupinski v. First Unum Life Ins. Co.*, 554 F.3d 38, 49-50 (2d Cir. 2009) (administrator’s conduct was culpable where it relied upon reports found to not be credible and which were directly contradicted by “voluminous” evidence).

Both courts that reviewed the Plan’s determination have noted the denial was not far-fetched or without reason. (*See Opinion*, p. 26 (“ITW and the Plan may well be proven right after additional investigation and review.”)); (Dkt. No. 67) (“The documentary record is absolutely clear that” Boysen’s claim should be denied.) This Court’s finding that the administrator could have done more to determine whether additional, *potentially*<sup>10</sup> relevant information might exist does not justify fees given the Plan’s good faith and reasoned basis for its determinations. Without a showing of bad faith, the Court should deny Boysen’s application for fees. *Andrews v. Employees’ Ret. Plan of First Alabama Bancshares, Inc.*, 938 F.2d 1345, 1248 (11th

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<sup>10</sup> The Court noted that the additional documents could *potentially* conflict with the record evidence or *potentially* benefit Boysen. (*Opinion*, p. 28.) But, at present, there is no basis to assume as much.

Cir. 1991) (finding “dispositive the lack of bad faith on the part of the Plan” in denying fees); *Florence Nightingale Nursing Serv., Inc. v. Blue Cross/Blue Shield of Ala.*, 41 F.3d 1476, 1485 (11th Cir. 1995) (fees denied based on lack of bad faith).

**B. The Relative Degree of Culpability Supports Denial of Fees.**

Further, the *relative degree* of culpability supports the denial of attorneys’ fees. Boysen’s own dilatory tactics and vexatious litigation strategy—which did nothing to further his claim—unnecessarily drove up the cost of fees<sup>11</sup> to *seven times* the value of his claim without obtaining any real relief. *After* Boysen rejected a settlement offer *in excess of 90%* of his claim value, Boysen proceeded to drive up fees through unnecessary briefing, embroiled discovery battles, and frivolous motion practice.<sup>12</sup> Boysen exploded the discovery phase by serving irrelevant, broad-sweeping discovery requests, filing three motions to compel (two of which were denied outright<sup>13</sup>), and seeking to extend the discovery period multiple times. (*See*

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<sup>11</sup> ITW and the Plan sought recovery of attorneys’ fees in the district court after obtaining summary judgment – clearly success *on the merits*. ITW & the Plan’s fees were very high due to having to defend against Boysen’s vexatious litigation tactics. In contrast, Boysen seeks even higher fees (which does not make sense because ITW & the Plan bore the brunt of discovery) after obtaining zero benefits and as a reward for his own obtuse litigation antics.

<sup>12</sup> Boysen also filed a Cross-Motion for Summary Judgment several months after the deadline, which required responsive briefing before Boysen agreed to withdraw it. (*See* Dkt. Nos. 56, 57.)

<sup>13</sup> The court denied Boysen’s first motion in all but two respects, ordering a plan administrator deposition and directing the production of “all records concerning the documented reasons for” Boysen’s termination “[t]o the extent not already produced.” (Dkt. No. 26 at 1-2.) But, ITW had already agreed to the deposition and

Dkt. Nos. 19, 37, 41.) Although ITW produced more than 1,000 documents *outside the administrative record* (Dkt. Nos. 72, 19 at 12-13), Boysen did not rely on *any* of those documents before the district court. (*See* Dkt. Nos. 14, 48, 49, and 50.) Thus, Boysen ran up fees over discovery issues all so that he could use *only the originally provided administrative record* before the district court. *Id.*

At every turn, Boysen sought to create issues, protract the litigation, and drive up fees well past any reasonable relation to his \$44,590.13 claim. The Court should not reward Boysen for his improper tactics with fees grossly disproportionate to the value of his claim. Instead, the Court should balance Boysen's *relative degree* of culpability in the litigation against ITW and the Plan's reasonable positions and good faith in processing his claim, and deny fees on that basis.

Importantly, ITW and the Plan cannot be said to be more culpable than Boysen simply because of the Court's determination that the plan administrator should go further in investigating certain categories of information. *See Geiger v. Pfizer*, 549 F. App'x 335, 339 (6th Cir. 2013) (a plan is not automatically culpable just because "a case is remanded to address an inadequate review of the record"). First, as discussed above, the plan administrator did compile a substantial record of evidence on which he based his decision and all such evidence consistently supported the denial of benefits. *Id.* (no culpability or bad faith when a plan's decision was

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produced all termination records. Thus, the motion accomplished nothing.

understandable given the evidence gathered). The plan administrator's decision to end the review process after compiling such extensive evidence does not amount to culpable conduct just because, with the benefit of hindsight, it is determined that the line should have been drawn elsewhere. *See Waschak v. The Acuity Brands, Inc. Senior Management Benefit Plan*, 384 F. App'x 919, 925 (11th Cir. 2010) ("In our jurisprudence, finding in favor of a beneficiary who sues for benefits does not obligate the court to grant fees."); *see also Tholke v. Unisys Corp.*, 2008 WL 1815691 at \*2 (S.D.N.Y. Apr. 13, 2008) (failure to provide a full and fair review does not equate to culpability); *contra Hefferman v. UNUM Life Ins. Co. of America*, 101 F. App'x 99, 109 (6th Cir. 2004) (ignoring overwhelming evidence and denying a claim without legitimate grounds can amount to culpability).

Second, the plan administrator explained his position to Boysen that the additional information requested did not appear relevant or likely to counter the evidence already gathered and his inclination to end the review process at that point. *See Dial v. NFL Player Supplemental Disability Plan*, 174 F.3d 606, 614 (5th Cir. 1999) (denying fees and noting that plan allowed claimant opportunity to respond before reaching its determination); *Trustees for Michigan BAC Health Care Fund v. OCP Contractors, Inc.*, 135 F. App'x 849, 852 (6th Cir. 2005) (finding no bad faith or culpability where ERISA fund "had thoughtfully analyzed its legal position and clearly communicated its position" to claimant). Here, not only did Boysen fail to

counter the administrator's position – he never responded at all. *See Geiger*, 549 F. App'x at 338 (plan was not culpable where it “was not solely responsible for the lack of evidence in the record [as the claimant] . . . bore the burden of proving entitlement to benefits, and counsel could have supplemented the record”).

Third, the plan administrator did not ignore “overwhelming evidence” contradicting the record, rely on evidence that was found to lack credibility, or carelessly ignore the basis of the claim. *Contra Slupinski*, 554 F.3d 38, 50; *contra Olds v. Retirement Plan of Inter. Paper Co., Inc.*, 2011 WL 2160264 at \*4 (S.D. Ala. June 1, 2011) (culpability found when plan was “careless in completely ignoring what was patently the basis of the plaintiff's claim”). Instead, the administrator conducted a reasoned analysis of the information requested and determined that it would not be relevant or outweigh evidence already compiled supporting denial of Boysen's claim. *See Dixon v. Seafarers' Welfare Plan*, 878 F.2d 1411, 1413 (11th Cir. 1989) (affirming denial of fees because administrator had reasonable basis for denial); *see also Prelutsky v. Greater Georgia Life Ins. Co.*, 2017 WL 2115894 at \*1 (N.D.Ga. May 16, 2017) (where plan's decisions were “grounded in a plausible interpretation of the facts and the language of the plan” no showing of culpability).

**C. The Relative Merits of the Parties' Positions Supports Denial of Boysen's Application for Fees.**

The relative merits of the parties' positions do not support an award of fees. The authority Boysen relies on recognizes that the relative merits still may not justify

fees even where there is a remand to the plan. *See Gross*, 763 F.3d at 85. As in *Gross*, Boysen “has not yet established a right to benefits and, even with supplemental evidence upon remand, [h]e may fall short of meeting [his] burden to prove” entitlement to benefits. *Id.* at 28. This Court already acknowledged that “ITW and the Plan may well be proven right after additional investigation and review.” (Opinion, p. 26.) Thus, the Plan’s denial of Boysen’s claim was not without merit. And, this is in stark contrast to Boysen, who, despite four years of litigation involving dilatory conduct and unreasonable postures as discussed above, has not established entitlement to any relief sought in this case. (Dkt. No. 1, ¶ 35.)

Even where a plan’s decision was wrong, courts have still denied fees where there is an arguable or reasonable basis for the decision. *See Byars v. Coca-Cola Co.*, 517 F.3d 1256, 1269 (11th Cir. 2008); *see also Dixon*, 878 F.2d at 1413. As discussed above, the Plan’s denial of benefits was supported by a substantial evidentiary and reasonable basis, and the decision that further inquiry into the existence of a “restructuring document” related to changes in job *titles* or *additional* information regarding Boysen’s performance was unnecessary was reasonable, especially ***after sharing the information supporting denial with Boysen who never responded***. Because the plan administrator’s determinations were reasonable, even if the lack of further inquiry on certain topics was erroneous, a fee award is not appropriate. *See Bauman v. Publix Super Markets, Inc.*, 2018 WL 508067 at \*2



(N.D.Ga. Jan. 23, 2018) (attorneys' fees not appropriate where there is a good-faith basis for determinations and positions taken, based on "plausible interpretation of the facts and the plan language" even if ultimately unsuccessful); *see also Eisenrich v. Minneapolis Retail Meat Cutters and Food Handlers Pension Plan*, 574 F.3d 644, 651 (8th Cir. 2009) (reversing award of fees where "[a]lthough the Plan's position is mistaken, it is not egregiously so").

**D. Other Factors Also Support Denial of Fees.**

Other *Hardt* factors support denial of fees. The Plan's lack of culpability confirms that a fee award would not accomplish a desired deterrent effect. *See Geiger*, 549 F. App'x at 339 ("deterrence 'is likely to have more significance in a case where the defendant is highly culpable' or where 'deliberate misconduct is in the offing'"). Further, Boysen seeks only personal benefits, and a grossly disproportionate fee award would deplete plan assets. *Hardt*, 560 U.S. at 249 n.1.

**III. The Amount of Fees Requested in the Petition is Not Reasonable**

**A. Boysen Should Not be Awarded Fees for Time Spent on Pre-Litigation Administrative Proceedings.**

Attorneys' fees incurred in ERISA pre-litigation administrative proceedings are not recoverable in this Circuit. *Kahane v. Unum Life Ins. Co. of Am.*, 563 F.3d 1210, 1214-15 (11th Cir. 2009) (collecting cases holding the same from all six courts of appeal that had considered the question). Thus, if fees are awarded, the total award should be reduced to account for time attributable to pre-suit administrative

proceedings with the Plan, which amounts to \$14,603.00. (See **Exhibit A.**)

**B. Any Fee Award Should be Denied or Reduced to Reflect that Only One Argument Was Ruled On.**

The procedural victory Boysen achieved played a minor role in Boysen's litigation efforts and expenditure of fees, rendering a fee award even more inappropriate. See *Andrews v. Blue Cross Blue Shield of Nebraska Employee Group Long Term Disability Ins. Plan*, 2006 WL 259673 at \*4 (10th Cir. Feb. 3, 2006) (affirming denial of fees where bulk of litigation devoted to issue on which claimant did not prevail); *Cawley v. Integrated Disability Resources, Inc.*, 2006 WL 8434019 at \*4 (S.D. Ga. Mar. 22, 2006) (same). At most, Boysen's fee recovery should be limited only to time spent on his full and fair review arguments. *Barker v. Niles Bolton Assocs. Inc.*, 316 F. App'x 933, 944 (11th Cir. 2009) (citation omitted) (the "Court may exercise its discretion to reduce the lodestar where hours are attributable to unsuccessful claims "or simply to reduce the fee award to account for limited success.""). Thus, Boysen should not recover fees for discovery, discovery motions, "emergency motions" to extend deadlines, settlement, fees at the district court level, or unsuccessful mediation, resulting in a reduction of \$127,097.80. (See **Exhibit B.**)

Still further, the block billing and vague time entries show that just \$5,774.18 worth of the remaining larger categories of fees—summary judgment and the appeal—reference the procedural "full and fair review" issue. (See **Exhibit C.**) Accordingly, any award of fees should be limited to \$5,774.18.

Even if Appellant is given additional credit for other time within the vague, imprecise time entries, the Court should allow no more than one-third of the remaining \$118,790.09 in fees associated with the appeal<sup>14</sup> and \$58,470.64 associated with the lower court action<sup>15</sup>, as the vast majority of Boysen's arguments at both stages focused on: (1) an alleged conflict of interest and (2) substantive arguments in favor of an award of benefits. Neither of those assertions were "successful" as required to support an award of fees. Reducing the remaining potential fee award by two-thirds leaves just \$60,269.66 for potential award.

**C. Any Fee Award Should be Reduced for Time Spent on Non-compensable Clerical Tasks.**

Clerical work "is viewed as falling within the category of unrecoverable overhead expenses." *Scelta v. Delicatessen Support Servs., Inc.*, 203 F. Supp. 2d 1328, 1334 (M.D. Fla. 2002) (citation omitted); *accord For Play Ltd. v. Bow to Stern Maintenance, Inc.*, 2006 WL 3662339, at \*7 (S.D. Fla. Nov. 6, 2006) (citations omitted). Boysen's records shows abundant time billed for clerical tasks. (See, **Exhibit D.**) Any fee recovery should be reduced by \$38,377.16 for these clerical

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<sup>14</sup> ITW & the Plan submit that, as a matter of practical realty, spending more than \$100,000 in fees on a single appeal is unreasonable. Further, Boysen's counsel unreasonably increased rates for appellate work in some cases by roughly 20%. (See, e.g., Fee Petition at Exhibit 5 (Barsness rate increase from \$250.00 to \$307.99.))

<sup>15</sup> The remaining fee categories segregated by Appellants are "Complaint and Reviewing Answer," "Motion for Summary Judgment," and "Pre-Appeal Prep and Evaluation." (See Fee Petition at Exhibit 4.)

tasks. (See **Exhibit D**; Fee Petition at Exs. 4-5.)

**D. Any Fee Award Should be Reduced by an Across-the-Board Percentage as a Result of Vague and Blockbilled Time Entries.**

“Courts have broad discretion in determining the extent of a reduction for blockbilling” and vague entries “not of ‘sufficient detail and probative value to enable the court to determine with a high degree of certainty that such hours were actually or reasonably expended.’” *Shipley v. Hypercom Corp.*, 2012 WL 12871631, at \*12 (N.D. Ga. May 31, 2012) (citations omitted) (applying across the board percentage reduction for blockbilling). Boysen’s counsel’s time entries are a quintessential example of blockbilled and vague entries. Each working timekeeper bills only one time entry per day, with some entries covering more than half a day of billable time. (See, **Exhibit E**.) Many of the entries are vague, stating little more than “review court notice” or “mediation preparation.” (See, **Exhibit F**.) Such practices warrant an across-the-board percentage deduction in fees of at least 15%, leaving only a \$18,608.62 potentially recoverable fee amount. (See **Exhibit G**.) *Green v. City of N.Y.*, 403 F. App’x 626, 630 (2d Cir. 2010) (15% reduction); *Johnson v. Bd. of Educ. Champaign Cmty. Unit Sch. Dist. #4*, 2011 WL 2160944, at \*9-10 (C.D. Ill. June 1, 2011) (25% reduction).

**CONCLUSION**

This Court should exercise discretion to deny the Application for Attorneys’ fees or, alternatively, award a reduced amount proportionate to Boysen’s results.

Dated: July 22, 2019

/s/ Wesley E. Stockard

Wesley E. Stockard  
LITTLER MENDELSON, P.C.  
3344 Peachtree Road N.E.  
Suite 1500  
Atlanta, GA 30326.4803  
404.443.3502

Attorneys For Appellees Illinois Tool  
Works Inc. Separation Pay Plan and  
Illinois Tool Works Inc.

**CERTIFICATE OF COMPLIANCE**

This document complies with the Type-Volume Limitation of Federal Rule of Appellate Procedure 32(a)(7)(B)(1) because, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32 and Eleventh Circuit Rule 32-4, this document does not exceed 20 pages.

This document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Word 2010 with 14-point Times New Roman.

/s/Wesley E. Stockard



**CERTIFICATE OF SERVICE**

I hereby certify that on July 22, 2019, a true and correct copy of the foregoing was filed electronically with the Clerk of Court using the CM/ECF system and served on all counsel of record identified on the Service List, via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

*/s/ Wesley E. Stockard*

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Wesley E. Stockard

**EXHIBIT A—TIME SPENT ON ADMINISTRATIVE PROCEEDINGS**

Name	Atty / Paralegal	Hours Spent on Pre-Complaint Correspondence and Investigation <sup>1</sup>	Billing Rates	Total Fees
RLA - R. Lawrence Ashe, Jr.	Atty	10	\$490.00	\$4,900.00
PRB - Paul R Barsness	Atty	37.4	\$250.00	\$9,350.00
TJOH - Tiffany R. Johnson	Atty	1.5	\$210.00	\$315.00
SKB - Shay K Burdette	Paralegal	0.2	\$190.00	\$38.00
<b>Totals</b>		<b>49.1</b>		<b>\$14,603.00</b>

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<sup>1</sup> These figures are based upon Boysen's summary of time and fees incurred in connection with the Hours Spent on Pre-Complaint Correspondence and Investigation as reflected in Exhibit 4 to Boysen's Fee Petition.

**EXHIBIT B—TIME SPENT ON NON-FULL & FAIR REVIEW**  
**ARGUMENTS**

*The following is a chart showing the aggregate amount of non-full & fair review related work performed across all of Boysen's billing entries:*

Name	Atty / Paralegal	Hours Spent on Non-Full & Fair Review Arguments	Billing Rates	Total Fees
RLA - R. Lawrence Ashe, Jr.	Atty	117.7	\$490/\$493.65	\$57,717.17
PRB - Paul R Barsness	Atty	116.9	\$250/\$307.99	\$30,390.60
TJOH - Tiffany R. Johnson	Atty	149.2	\$210	\$315.00
KHOD – Katrina Hodges	Atty	9.4	\$190	\$1,786.00
JAW – Julie A. Wood	Atty	7.8	\$331.75	\$2,587.65
SKB - Shay K Burdette	Paralegal	6.3	\$190/\$237.34	\$1,197.00
MCLI – Mark Cline	Paralegal	10.4	\$200.71/\$212.35	\$2,087.38
				<b>\$127,097.80</b>

**EXHIBIT B—NON-FULL & FAIR REVIEW TIME**

*Below are all the detailed time entries showing non-full & fair review work performed by Boysen's attorneys and their staff:*

*Time Spent on Discovery*

Name	Atty/ Paralegal	Hours Spent on Discovery	Billing Rates	Total Fees
RLA - R. Lawrence Ashe, Jr.	Atty	87.4	\$490.00	\$42,826.00
PRB - Paul R Barsness	Atty	12.5	\$250.00	\$3,125.00
KHOD – Katrina L. Hodges	Atty	0.2	\$190.00	\$38.00
TJOH - Tiffany R. Johnson	Atty	103.1	\$210.00	\$21,651.00
SKB - Shay K Burdette	Paralegal	6.1	\$190.00	\$1,159.00
MCLI – Mark Cline	Paralegal	5.1	\$200.71	\$1,023.62
<b>Totals</b>		<b>214.4</b>		<b>\$69,822.62</b>

*Time Spent on Discovery Motions*

Name	Atty/ Paralegal	Hours Spent on Discovery Motions	Billing Rates	Total Fees
RLA - R. Lawrence Ashe, Jr.	Atty	6.7	\$490.00	\$3,283.00
PRB - Paul R Barsness	Atty	5.6	\$250.00	\$1,400.00
KHOD – Katrina L. Hodges	Atty	9.2	\$190.00	\$1,748.00
TJOH - Tiffany R. Johnson	Atty	42.6	\$210.00	\$8,946.00
MCLI – Mark Cline	Paralegal	4.5	\$200.71	\$903.20
<b>Totals</b>		<b>68.6</b>		<b>\$16,280.20</b>

Time Spent on "Emergency Motions"

Name	Atty/ Paralegal	Hours Spent on Emergency Motions	Billing Rates	Total Fees
RLA - R. Lawrence Ashe, Jr.	Atty	6.3	\$490.00	\$3,087.00
PRB - Paul R Barsness	Atty	49.7	\$250.00	\$12,425.00
SKB - Shay K Burdette	Paralegal	0.2	\$190.00	\$38.00
<b>Totals</b>		<b>56.2</b>		<b>\$15,550.00</b>

Time Spent on Settlement

Name	Atty/ Paralegal	Hours Spent on Settlement	Billing Rates	Total Fees
RLA - R. Lawrence Ashe, Jr.	Atty	3.7	\$490.00	\$1,813.00
PRB - Paul R Barsness	Atty	5.5	\$250.00	\$1,375.00
TJOH - Tiffany R. Johnson	Atty	3.5	\$210.00	\$735.00
<b>Totals</b>		<b>12.7</b>		<b>\$3,923.00</b>

*Time Spent on Mediation*

Name	Atty/ Paralegal	Hours Spent on Mediation	Billing Rates	Total Fees
RLA - R. Lawrence Ashe, Jr.	Atty	12.1	\$493.65	\$5,973.17
PRB - Paul R Barsness	Atty	20.1	\$307.99	\$6,190.60
JAW – Julie A. Wood	Atty	7.8	\$331.75	\$2,587.65
<b>Totals</b>		<b>40</b>		<b>\$14,751.41</b>

*Time Spent on Fee Motion and Bill of Costs*

Name	Atty/ Paralegal	Hours Spent on Emergency Motions	Billing Rates	Total Fees
RLA - R. Lawrence Ashe, Jr.	Atty	1.5	\$490.00	\$735.00
PRB - Paul R Barsness	Atty	23.5	\$250.00	\$5,875.00
MCLI – Mark Cline	Paralegal	0.8	\$200.71	\$160.57
<b>Totals</b>		<b>25.8</b>		<b>\$6,770.57</b>



**EXHIBIT C—TIME SPENT ON -FULL & FAIR REVIEW MATTERS**

*Below are all the detailed time entries showing all billing entries relating to Boysen's full & fair review argument by Boysen's attorneys and their staff:*

Date	Atty/ Paralegal	Billing Entry	Time	Billing Rate	Total Fees
8/6/16	PRB	Research case law finding that the refusal to consider information is arbitrary and capricious; research remand options	4.7	\$250	\$1175.00
8/8/16	PRB	Continue summary judgment work drafting arguments outlining the deficiencies in the administrative record	3.2	\$250	\$800.00
8/7/16	PRB	Analyze record and begin work drafting statement of facts showing the deficiency of Mr. Goldman's investigation	3.9	250	\$975.00
7/12/17	PRB	Analyze updated research on requirements for a full and fair review under ERISA	2.2	\$307.99	\$677.58
8/11/17	JAW	Review pleadings from district court re: full and fair review legal arguments	1.4	\$331.75	\$464.45
10/12/17	JAW	Review draft of brief; research Federal Register regarding the promulgates of Department of Labor rules in 2000 regarding "full and fair review"	0.8	\$331.75	\$265.40
10/24/17	PRB	Revise argument on the adequacy of the investigation	1.9	\$307.99	\$585.18

Date	Atty/ Paralegal	Billing Entry	Time	Billing Rate	Total Fees
10/27/17	PRB	Update research on requirements for a full and fair review and revise appellate brief	2.7	\$307.99	\$831.57
	<b>Totals</b>		<b>20.8</b>		<b>\$5,774.18</b>

**EXHIBIT C—TIME SPENT ON -FULL & FAIR REVIEW MATTERS**

Date	Atty/Paralegal	Billing Entry	Time	Billing Rate	Total Fees
8/6/16	PRB	Research case law finding that the refusal to consider information is arbitrary and capricious; research remand options	4.7	\$250	\$1175
8/8/16	PRB	Continue summary judgment work drafting arguments outlining the deficiencies in the administrative record	3.2	\$250	\$800
8/7/16	PRB	Analyze record and begin work drafting statement of facts showing the deficiency of Mr. Goldman's investigation	3.9	250	\$975
7/12/17	PRB	Analyze updated research on requirements for a full and fair review under ERISA	2.2	250	\$550
8/11/17	JAW	Review pleadings from district court re: full and fair review legal arguments	1.4	325	\$455
10/12/17	JAW	Review draft of brief; research Federal Register regarding the	0.8	325	\$260

Date	Atty/Paralegal	Billing Entry	Time	Billing Rate	Total Fees
		promulgates of Department of Labor rules in 2000 regarding "full and fair review"			
10/24/17	PRB	Revise argument on the adequacy of the investigation	1.9	250	\$475
10/27/17	PRB	Update research on requirements for a full and fair review and revise appellate brief	2.7	250	\$675
	<b>Totals</b>		<b>20.8</b>		<b>\$5,365</b>

**EXHIBIT D—CLERICAL ENTRIES**

*The following is a chart showing the aggregate amount of clerical time across all of Boysen's billing entries:*

Name	Atty / Paralegal	Clerical Hours	Billing Rates	Total Fees
RLA - R. Lawrence Ashe, Jr.	Atty	10.5	\$490.00 / \$493.65	\$5,155.22
PRB - Paul R Barsness	Atty	49.3	\$250.00 / \$307.99	\$13,675.26
TRJ - Tiffany R. Johnson	Atty	6.9	\$210.00	\$1,449.00
KHODG – Katrina L. Hodges	Atty	9.1	\$190.00	\$1,729.00
SKB - Shay K Burdette	Paralegal	33	\$190.00 / \$237.34	\$7,505.57
MCLI –Mark Cline	Paralegal	42.1	\$200.71 / \$212.35	\$8,863.11
<b>Totals</b>		<b>153.1</b>		<b>\$38,377.16</b>

**EXHIBIT D—CLERICAL ENTRIES**

*Below are all the detailed time entries showing clerical work by Boysen's attorneys and their staff:*

Date	Atty/ Paralegal	Billing Entry	Time	Rate	Total Fees
6/6/2014	RLA	Supervise transmittal of response letter to ITW	0.4	490	\$196.00
6/6/2014	SKB	Update letter to ITW	0.2	190	\$38.00
5/27/2015	PRB	Final revisions; supervise filings	1	250	\$250.00
6/2/2015	TRJ	Review correspondence from opposing counsel re: discovery issues; draft notice of deposition; strategize Goldman deposition notice and scheduling; discuss confidentiality agreement provisions; email opposing counsel re: confidentiality agreement and deposition scheduling	0.8	210	\$168.00
1/27/2016	SKB	Process incoming discovery from defendant, download document production, send same to client via Hightail	1	190	\$190.00
2/24/2016	RLA	Letters from and letters to TRJ; scan proposed motion for extension of discovery	0.6	490	\$294.00



Date	Atty/ Paralegal	Billing Entry	Time	Rate	Total Fees
3/25/2016	TRJ	Review and revise proposed order; discuss same; telephone conference with court reporter re: transcript of hearing; review defendants' objection to proposed order and discuss same	0.8	210	\$168.00
3/30/2016	RLA	Letter from court reporter/TRJ	0.1	490	\$49.00
5/23/2016	TRJ	Review order granting in part and denying in part motion to compel discovery; email re: same to RLA; telephone conference with judicial assistant re: order extending discovery period; strategize approach to opposing counsel re: discovery period	1.6	210	\$336.00
5/25/2016	TRJ	Draft notice of deposition of plan administration; discuss same; email opposing counsel re: same; discuss outstanding discovery and response to opposing counsel's refusal to comply with same; email opposing counsel re: discovery issues	3.2	210	\$672.00
6/6/2016	RLA	Work on deposition logistics; letter from	0.8	490	\$392.00

Date	Atty/ Paralegal	Billing Entry	Time	Rate	Total Fees
		client			
6/9/2016	RLA	Logistics for Goldman deposition	1.2	490	\$588.00
6/10/2016	RLA	Letter from, letters to and telephone conference with client; letter to ITW counsel re subpoena; letters to and letter from court reporter	0.8	490	\$392.00
6/22/2016	MCLI	Deposition/exhibit preparation	1	200.71	\$200.71
6/22/2016	SKB	Prepare exhibits and attorney materials for deposition	3.8	190	\$722.00
6/24/2016	TRJ	Discuss deposition of Elliott Goldman and follow up from same; telephone conference with videographer re: deposition video	0.5	210	\$105.00
6/27/2016	RLA	Letter from and letter to videography firm; letters to and letter from client	0.3	490	\$147.00
6/29/2016	MCLI	Draft and file Notice of Leave	0.5	200.71	\$100.36
7/6/2016	RLA	Letter from and letter to TRJ; letter to TRJ/ITW counsel; letters to court reporter re Goldman transcript	0.4	490	\$196.00
7/14/2016	RLA	Prepare for tomorrow's meeting; letter to TRJ; letter to court reporter	0.6	490	\$294.00

Date	Atty/ Paralegal	Billing Entry	Time	Rate	Total Fees
7/18/2016	SKB	Download of Elliot Goldman deposition transcripts and exhibits to M drive, print transcript copy for TRJ review	0.3	190	\$57.00
7/20/2016	MCLI	Download and printing of Goldman exhibits for attorney review	0.6	200.71	\$120.43
7/20/2016	PRB	Confer with RLA about making appearance; review case materials and discovery documents; review settlement communications and confer with RLA and TRJ; supervise filing of notice of appearance	3.1	250	\$775.00
7/22/2016	MCLI	Conference with PRB re: filing of Motion to Compel Limited Discovery Prior to Consideration of Summary Judgment and Incorporated Brief in Support with exhibits; assist with preparation of exhibits and filing of same; emails with RLA re: receipt/review of ITW's brief and statement of uncontested material facts; return travel to office for printing and	2.5	200.71	\$501.78

Date	Atty/ Paralegal	Billing Entry	Time	Rate	Total Fees
		distribution; distribution of Goldman deposition to client for review/comment			
7/22/2016	RLA	Review documents motion as filed; deposition billing logistics	0.6	490	\$294.00
7/25/2016	MCLI	Email with PRB re: docketing of response in opposition to motion for summary judgment; research re: same; docket management	0.2	200.71	\$40.14
7/26/2016	MCLI	Email with distribution of Defendants' Motion for Summary Judgment, Brief in Support and Statement of Material Facts; upload same to network for attorney review; prepare attorney working notebook for PRB	0.7	200.71	\$140.50
7/28/2016	MCLI	Emails and office conference with PRB re: filing of Motion to Compel, Brief in Support and exhibits; filing with distribution of same	1	200.71	\$200.71
8/4/2016	PRB	Revise and supervise filing	1.3	250	\$325.00
8/10/2016	KHOD	Determine procedures for contacting Judge Thrash's chambers; review scheduling	4.4	190	\$836.00

Date	Atty/ Paralegal	Billing Entry	Time	Rate	Total Fees
		order; review and analyze order on motion to compel; discuss hearing on motion to compel with TRJ; review and analyze correspondence to RLA re: status of response filings; review and analyze transcripts of deposition and hearing on motion to compel; strategize reply to Plaintiff's response to Motion to Compel and discuss same with PRB			
8/10/2016	PRB	Continue work draft summary judgment facts; contact deputy clerk to discuss how to address response timing	4.2	250	\$1,050.00
9/23/2016	KHOD	Research and determine procedural requirements for submission of deposition transcript to court and prepare notice of filing of original transcript; correspond with PRB, support staff, court clerk, and court reporter re: obtaining original transcript	2.4	190	\$456.00
9/23/2016	RLA	Review and comment on draft; brief opposing Defendant's summary judgment motion; letter from and letter to PRB; letters from, letters to,	1.9	490	\$931.00

Date	Atty/ Paralegal	Billing Entry	Time	Rate	Total Fees
		telephone conference with KLH			
9/23/2016	SKB	Scan original deposition transcript for filing, print documents for RLA review	0.5	190	\$95.00
9/26/2016	KHOD	Finalize and prepare all documents in response to MSJ for filing; file all documents in support of MSJ	2.3	190	\$437.00
9/26/2016	PRB	Revise response brief; revise response to Defendants' statement of undisputed facts; revise statement of additional facts; revise declaration; revise cross-motion for summary judgment and notice of filing deposition; supervise filings and exhibits	12.7	250	\$3,175.00
9/26/2016	PRB	Supervise filing of deposition exhibits under seal	0.3	250	\$75.00
9/27/2016	SKB	Prepare Goldman deposition transcript and exhibits for filing; e-mails to KLH and PRB re same	0.5	190	\$95.00
10/4/2016	SKB	Review case filings, update event dates in prolaw	0.2	190	\$38.00
11/21/2016	PRB	Finish research for sur-reply; draft sur-reply brief and motion for	8.2	250	\$2,050.00

Date	Atty/ Paralegal	Billing Entry	Time	Rate	Total Fees
		permission to file; revise and supervise filing			
1/13/2017	PRB	Confer with RLA about appeal options; call deputy clerk to inquire about attorney fee award in judgment	0.6	250	\$150.00
1/13/2017	SKB	Review case filings, update event dates on calendar	0.2	190	\$38.00
1/18/2017	PRB	Revise and supervise filing of response to emergency motion	1.3	250	\$325.00
1/23/2017	SKB	Review case filings, update event calendar, e-mails with PRB re same	0.2	190	\$38.00
2/2/2017	PRB	Final review and revisions to, and supervise filing of, motion to alter or amend judgment and reconsider summary judgment	2.2	250	\$550.00
2/2/2017	PRB	Final review and revisions to, and supervise filing of, response to Defendants' motion for attorneys' fees	2.8	250	\$700.00
3/1/2017	MCLI	Calendar/Docketing of Deadline for Review of Taxation of Costs	0.1	200.71	\$20.07
6/29/2017	PRB	Draft and supervise filing of Notice of Appeal	0.5	307.99	\$154.00



Date	Atty/ Paralegal	Billing Entry	Time	Rate	Total Fees
6/30/2017	MCLI	Docket management regarding appeal with emails to PRB regarding same	0.3	212.35	\$63.71
7/6/2017	MCLI	Conference with PRB re: completion of Transcript Order Information Form for filing with court; research and telephone call to Judge Thrash's chambers to arrange for prepayment of transcript fees; work to complete Transcript Order Information form	0.7	212.35	\$148.65
7/6/2017	PRB	Supervise compliance with appeal docketing requirements	2.3	307.99	\$708.38
7/7/2017	MCLI	Work to prepare Eleventh Circuit Transcript Information Form	0.7	212.35	\$148.65
7/10/2017	PRB	Continue work supervising compliance with compiling the record for appeal	1	307.99	\$307.99
7/11/2017	MCLI	Emails and calls with court reporter for execution/completion of transcript order forms for filing with court of appeals; preparation of forms	0.4	212.35	\$84.94
7/11/2017	PRB	Supervise transcript requests	0.2	307.99	\$61.60

Date	Atty/ Paralegal	Billing Entry	Time	Rate	Total Fees
7/13/2017	MCLI	Emails with Susan Baker of US Dist Court re: filing of Transcript Order form for her execution and filing with the Court of Appeals as well as District Court's failure to transfer file on June 29	0.2	212.35	\$42.47
7/13/2017	MCLI	Assist PRB and JAW with filing of Transcript Order Form and supporting documents	0.2	212.35	\$42.47
7/13/2017	MCLI	Emails with PRB re: timeliness of cross Appeal; research same	0.9	212.35	\$191.12
7/13/2017	PRB	Supervise submission of record information for appeal and confer with BUZO and MCLI about docketing status	0.4	307.99	\$123.20
7/17/2017	PRB	Supervise filings required for notice of appearance	0.2	307.99	\$61.60
7/18/2017	RLA	Review court notices	0.1	493.65	\$49.37
7/24/2017	PRB	Supervise filing of Certificate of Interested Persons	0.3	307.99	\$92.40
7/26/2017	MCLI	Calculate and docket response dates pursuant to Court's Notice of Docketing; emails with PRB re: same	0.6	212.35	\$127.41
7/27/2017	MCLI	Assist with filings of Entry of Appearance	0.4	212.35	\$84.94

Date	Atty/ Paralegal	Billing Entry	Time	Rate	Total Fees
		and Civil Appeals Statement			
7/28/2017	RLA	Letter from and telephone conference with 11th Circuit regarding briefing schedule; telephone conference with 11th Circuit regarding extension for brief; letter from 11th Circuit granting extension for brief until September 5, 2017	0.7	493.65	\$345.56
8/22/2017	MCLI	Emails and calls with 11th Circuit regarding need for Motion to review administrative record filed under seal	0.3	212.35	\$63.71
9/1/2017	MCLI	Monitor upcoming case schedule and deadlines	0.3	212.35	\$63.71
9/7/2017	MCLI	Emails and office conference with PRB re: status of matter and deadline for filing of Brief and Appendix in Support; research regarding same	0.7	212.35	\$148.65
9/28/2017	MCLI	Call with clerk re: Cross appeal deadlines; docket response dates accordingly	0.5	212.35	\$106.18
10/5/2017	RLA	Letters to and from client regarding mediation logistics	0.3	493.65	\$148.10

Date	Atty/ Paralegal	Billing Entry	Time	Rate	Total Fees
10/26/2017	MCLI	Begin preparation of Administrative Record index; book marking of administrative record for speed and ease of searching	2.8	212.35	\$594.58
10/30/2017	MCLI	Assist with finalizing and preparation of Tables of Contents and Tables of Authorities; conference with PRB re: same	0.9	212.35	\$191.12
10/31/2017	MCLI	Assist with preparation and filing of Brief; calls with J. Burnbaum of NDGA regarding records filed under seal; emails with PRB and JAW re: same	1.6	212.35	\$339.76
10/31/2017	PRB	Finalize and supervise filing of appellate brief	1.7	307.99	\$523.58
11/1/2017	PRB	Supervise compilation of appendix and confer with opposing counsel about contents	0.3	307.99	\$92.40
11/2/2017	MCLI	Begin preparing appendix in support for filing; office conferences and emails with PRB and JAW re: same	4.1	212.35	\$870.64
11/2/2017	PRB	Confer with MCLI about Appendix content	0.2	307.99	\$61.60
11/2/2017	RLA	Review efilings	0.3	493.65	\$148.10

Date	Atty/ Paralegal	Billing Entry	Time	Rate	Total Fees
11/3/2017	MCLI	Multiple conferences with USDC Northern District of Georgia (J. Burnbaum-Docketing Supervisor) and 11th Circuit (Jenet Meyer-case manager) re: need to copies of documents filed under seal; emails with RLA, PRB and JAW re: same	0.9	212.35	\$191.12
11/6/2017	MCLI	Continue with preparation of appendix exhibits; research local rules and requirements for filing	2.7	212.35	\$573.35
11/6/2017	PRB	Confer with opposing counsel and supervise filing of Appendix	0.6	307.99	\$184.79
11/6/2017	RLA	Emails regarding record filing requirements in the 11th Circuit with MCLI, JAW, PRB	0.6	493.65	\$296.19
11/7/2017	MCLI	Finalize and file Appendix with distribution of service copies; prepare under seal filed documents for filing with the court	6.2	212.35	\$1,316.57
11/7/2017	RLA	Letter from MCLI regarding appendix logistics; letters to and from Evan Anderson	0.2	493.65	\$98.73

Date	Atty/ Paralegal	Billing Entry	Time	Rate	Total Fees
11/13/2017	MCLI	Telephone conference with Court of Appeals re: notice of deficiency in mailing;	0.2	212.35	\$42.47
11/14/2017	MCLI	Calls and emails with Clerk of Court regarding formatting of hard copy appendix and need to be split into volumes	0.3	212.35	\$63.71
11/15/2017	MCLI	Reformat hard copies of appendix per 11th Circuit Court case manager request	1.2	212.35	\$254.82
11/22/2017	MCLI	Review of Court minute order and update docket and response dates	0.2	212.35	\$42.47
1/4/2018	MCLI	Monitor case schedule and upcoming deadlines	0.2	212.35	\$42.47
1/23/2018	MCLI	Assist with revisions/edits to response brief; filing of same; calls to Clerk of the Court regarding Certificate of Interested Persons filing; prepare for distribution mandatory service copies for court	1.2	212.35	\$254.82
1/23/2018	PRB	Confer with RLA, make final revisions to appellate brief, and supervise filing	6.1	307.99	\$1,878.74
1/24/2018	MCLI	Assist with finalizing and filing of brief	1.1	212.35	\$233.59

Date	Atty/ Paralegal	Billing Entry	Time	Rate	Total Fees
1/25/2018	MCLI	Monitor case schedule and upcoming deadlines	0.1	212.35	\$21.24
1/31/2018	RLA	Letters to and from Mark Cline regarding Clerk's Office instructions regarding disclosure statement	0.2	493.65	\$98.73
3/2/2018	MCLI	Multiple calls with 11th Cir case manager re: need for additional copies of Appendix for oral argument; begin preparing same for distribution	2.5	212.35	\$530.88
3/5/2018	MCLI	Prepare additional volumes of entire Appendix for 11th Circuit Oral Argument; calls with Mary Marshall, case manager and with delivering courier	1.7	212.35	\$361.00
3/9/2018	MCLI	Prepare briefing binders	0.7	212.35	\$148.65
3/12/2018	MCLI	Calls to 11th Circuit case manager inquiring about Oral Argument; continue with briefing binders	0.7	212.35	\$148.65
4/12/2018	SKB	Confer with JAW re timekeeper task categories for motion for attorneys' fees, begin review of billing for each timekeeper	1.5	237.34	\$356.01
5/9/2018	RLA	Review 11th Circuit oral argument calendar	0.2	493.65	\$98.73



Date	Atty/ Paralegal	Billing Entry	Time	Rate	Total Fees
6/14/2018	SKB	Review court notice, update event dates in Prolaw	0.2	237.34	\$47.47
7/6/2018	SKB	Download case law for attorney oral argument preparation	0.5	237.34	\$118.67
7/19/2018	SKB	Prepare attorney materials for hearing, confer with PRB re: same	0.8	237.34	\$189.87
7/20/2018	SKB	Prepare attorney materials for oral argument	1.8	237.34	\$427.21
7/31/2018	SKB	Review case citations for judges on panel, e-mail PRB re: same	0.3	237.34	\$71.20
7/31/2018	SKB	Communication with court deputy re: judges on panel, e-mails and correspondence re: same	1.5	237.34	\$356.01
7/31/2018	SKB	Meeting with PRB re: defendant's production, review e-mails and correspondence re: same	1.5	237.34	\$356.01
8/2/2018	SKB	Draft timeline of discovery dispute, e-mail same to PRB	0.8	237.34	\$189.87
8/6/2018	RLA	Moot court scheduling	0.2	493.65	\$98.73
8/6/2018	SKB	Prepare documents for moot court panel	0.2	237.34	\$47.47
8/7/2018	SKB	Prepare attorney documents for moot argument	1.3	237.34	\$308.54
4/3/2019	SKB	Review order, confirm rules and schedule	0.2	237.34	\$47.47

Date	Atty/ Paralegal	Billing Entry	Time	Rate	Total Fees
		associated event deadlines			
4/8/2019	SKB	Confer with JAW re bill of cost filing, compile figures for same and draft form for filing	1.5	237.34	\$356.01
4/10/2019	SKB	Confirm fees paid for bill of costs and rules for same, e-mail PRB and JAW re same	0.3	237.34	\$71.20
4/11/2019	SKB	Meeting with JAW re motion for attorneys' fees, request all bills from accounting, review of same	1	237.34	\$237.34
4/15/2019	SKB	Prepare documents for motion for attorneys' fees	1.5	237.34	\$356.01
4/16/2019	SKB	Prepare documents for application for attorneys' fees	5	237.34	\$1,186.70
4/22/2019	SKB	Prepare calculations for motions for attorneys' fees	3	237.34	\$712.02
4/23/2019	SKB	Prepare calculations for motion for attorneys' fees	3	237.34	\$712.02
4/24/2019	SKB	Review petition for rehearing en banc, review rules associated with filing, e-mails with JAW re same	0.2	237.34	\$47.47
<b>Totals</b>			<b>153.1</b>		<b>\$38,377.17</b>

**EXHIBIT E—BLOCKBILLING ENTRIES**

*The following is a chart showing the aggregate amount of blockbilled time across all of Boysen's billing entries:*

Name	Atty / Paralegal	Blockbilled Hours	Billing Rates	Total Fees
RLA - R. Lawrence Ashe, Jr.	Atty	114.4	\$490.00/\$493.65	\$56,109.00
PRB - Paul R Barsness	Atty	78.6	\$250.00/\$307.99	\$19,743.00
TRJ - Tiffany R. Johnson	Atty	112.2	\$210.00	\$23,562.00
JAW - Julie A. Wood	Atty	17	\$325.00/\$331.75	\$5,640.00
KHODG – Katrina L. Hodges	Atty	34.2	\$190.00	\$6,498.00
<b>Totals</b>		<b>356.4</b>		<b>\$111,552.00</b>

**EXHIBIT E—BLOCKBILLING ENTRIES**

*Below are all the detailed time entries showing blockbilling by Boysen's attorneys and their staff:*

Date	Atty/ Paralegal	Billing Entry	Time	Billing Rates	Total Fees
4/24/2014	RLA	Email exchange with D. Scruggs; telephone conference with M. Wexler re: D. Scruggs; review e-mail from D. Scruggs; e-mail exchange and telephone conference with D. Boysen	1	\$490	\$490
6/5/2014	RLA	Conference with PRB; Review and edit PRBs' draft letter to Mr. Scruggs; e-mail exchange with client	0.8	\$490	\$392
6/5/2014	PRB	Finish response letter; confer with RLA and revise and edit letter	1.5	\$250	\$375
6/6/2014	RLA	Review e-mails from client; review e-mails from ITW counsel Scruggs	0.6	\$490	\$294
8/8/2014	RLA	Conference with PRB; review e-mail from PRB; telephone conference with D. Boysen and PRB; review e-mails from client; review, edit and send letter to ITW counsel	0.8	\$490	\$392
8/8/2014	PRB	Confer with RLA about response; draft response letter; confer	3.6	\$250	\$900

Date	Atty/ Paralegal	Billing Entry	Time	Billing Rates	Total Fees
		with JDG about potential ERISA claims and process for satisfying exhaustion requirements			
8/11/2014	RLA	Edit and file appeal re: benefits; conference with PRB; e-mail exchange with client	0.6	\$490	\$294
9/25/2014	RLA	Review e-mail from J. Scruggs; review e-mail from client and PRB re: same	0.2	\$490	\$98
9/26/2014	RLA	Review e-mail from J. Scruggs; review e-mail from client and PRB re: same	0.4	\$490	\$196
12/3/2014	RLA	Review email from E. Goldman for ITW; review e-mail from client	0.3	\$490	\$147
11/8/14	RLA	Review email from opposition; several conferences with PRB	0.3	\$490	\$147
1/29/2015	PRB	Begin claims research for contingency memorandum; review case law regarding fraud claims and ERISA preemption	3.1	\$250	\$775
1/30/2015	PRB	Continue claims research; review case law regarding the standard of review in an ERISA denial-of-benefits case; begin	4.4	\$250	\$1,100

Date	Atty/ Paralegal	Billing Entry	Time	Billing Rates	Total Fees
		review of case law interpreting the phrase "job elimination" as a criteria for benefits eligibility			
2/23/2015	RLA	Telephone conference and conference with PRB; review and edit PRB memo re: contingent fee; review email from client; review e-mail from client to PRB	0.7	\$490	\$343
2/23/2015	PRB	Review client information and send description of deadlines and next steps; confer with RLA about claims analysis and response to ITW	1.1	\$250	\$275
5/22/2015	RLA	Review and edit TRJ draft complaint; letters to and letters from client; conference with PRB re: same; telephone conference with client PRB; revise and edit draft supplemental retainer letter to client; conference with PRB re: same	0.9	\$490	\$441
5/22/2015	PRB	Revise engagement letter and send to Mr. Boysen; revise and distribute complaint	1.6	\$250	\$400

Date	Atty/ Paralegal	Billing Entry	Time	Billing Rates	Total Fees
5/26/2015	RLA	Letters from and letters to client; conference with PRB	0.4	\$490	\$196
8/4/2015	RLA	Letters from Grady Murdock, counsel for ITW; letter to PRB	0.3	\$490	\$147
8/5/2015	RLA	Letter from and letter to Grady Murdock; telephone conference	0.4	\$490	\$196
9/21/2015	RLA	Letter from and letter to opposing counsel yesterday; review consent order; letter to client; letter from and letter to PRB	0.6	\$490	\$294
10/2/2015	RLA	Letter from, letter to and telephone conference with Wes Stockard; letter from Grady Murdock; letter to client and PRB	0.7	\$490	\$343
10/8/2015	RLA	Telephone conference with ITW counsel; letters to client	0.4	\$490	\$196
10/12/2015	RLA	Review research memo by TRJ; letter to and telephone conference with Grady Murdock; conference with TRJ	0.7	\$490	\$343
11/3/2015	RLA	Letters from ITW counsel; work with TRJ on issues	0.6	\$490	\$294
11/3/2015	PRB	Confer with TRJ about 26(f) report; research grounds for jury trial; research	2.9	\$250	\$725



Date	Atty/ Paralegal	Billing Entry	Time	Billing Rates	Total Fees
		grounds for discovery beyond administrative file			
11/4/2015	RLA	Letter to and letter from ITW counsel; letter from and letter to TRJ re: draft court filing; telephone conference with ITW counsel re: settlement	0.4	\$490	\$196
11/8/2015	RLA	Conference with PRB; telephone conference and conference with TRJ and JDG; telephone conference with Grady Murdoch; work on scheduling order issues	1.3	\$490	\$637
11/9/2015	RLA	Letter from referring counsel; letter to Robin Potter potential Illinois counsel; letter from and letter to Judge Thrash's office; letters from ITW counsel; letters from client re: Mexico situation and job performance; letter from PRB and client re: scope of discovery and purposed of hearing before Judge Thrash	1.5	\$490	\$735
11/17/2015	RLA	Conference with TRJ; preparation for	1.4	\$490	\$686

Date	Atty/ Paralegal	Billing Entry	Time	Billing Rates	Total Fees
		tomorrow's hearing; read cited cases			
11/17/2015	TRJ	Research 11th Circuit cases re: scope of discovery in ERISA benefits litigation; review client documents and correspondence with plan administrator; revise outline in preparation for hearing	1.5	\$210	\$315
11/18/2015	RLA	Letter from, letter to and telephone conference with client with TRJ	0.7	\$490	\$343
11/18/2015	TRJ	Prepare for hearing re: scope of discovery; travel to/from hearing; participate in hearing; discuss same	2.7	\$210	\$567
11/22/2015	RLA	Work on discovery; letters to and letter from client	0.8	\$490	\$392
11/30/2015	RLA	Work on discovery; work on factual research	0.6	\$490	\$294
12/1/2015	RLA	Review and edit TRJ initial disclosures draft; letters from and letters to TRJ and client	0.7	\$490	\$343
12/3/2015	RLA	Letter from and conference with TRJ; letter from and letter to ITW counsel;	0.7	\$490	\$343

Date	Atty/ Paralegal	Billing Entry	Time	Billing Rates	Total Fees
		review ITW's filing; letter to ITW counsel re: media inquiry			
12/4/2015	TRJ	Email opposing counsel re: initial disclosure production and ESI conference; email client re: same	1.8	\$210	\$378
12/7/2015	RLA	Conference with TRJ; prepare for and telephone conference with ITW counsel with TRJ; letter to ITW counsel re: deposition scheduling and media issue	1.2	\$490	\$588
12/9/2015	RLA	Letter from and telephone conference with client; draft discovery pleadings after relevant file review	1.6	\$490	\$784
12/10/2015	RLA	Work on discovery, related file review and client's suggestions	1.6	\$490	\$784
12/11/2015	RLA	Complete work on discovery drafts; conference with TRJ; review TRJ edits and client input; get discovery served on ITW counsel; telephone conference, letters to and letters from client; letter from Shella Neba, ITW counsel	2.3	\$490	\$1,127

Date	Atty/ Paralegal	Billing Entry	Time	Billing Rates	Total Fees
12/14/2015	RLA	Letter from client; letter to ITW counsel	0.3	\$490	\$147
12/21/2015	RLA	Letter to and letter from client; letter to and letter from TRJ; letter to ITW counsel	0.6	\$490	\$294
12/22/2015	RLA	Letter from and letter to ITW counsel; letter to and letter from TRJ	0.3	\$490	\$147
1/12/2016	RLA	Letter to potential witness; letters from, letters to and telephone conference with client; conference with TRJ	0.9	\$490	\$441
1/13/2015	RLA	Letter from, letter to and conference with TRJ; review and edit deposition notices; conferences with RTC, TRJ and WJH re: same; letter to ITW counsel re: accepting witness subpoenas	0.8	\$490	\$392
1/15/2016	RLA	Letter from and letter to Wes Stockard; telephone conference with Mr. Stockard; letter to TRJ	0.8	\$490	\$392
1/26/2016	RLA	Review and analysis of discovery pleadings from ITW counsel; conference with TRJ	0.6	\$490	\$294
2/8/2016	RLA	Conference with TRJ; telephone conference	0.7	\$490	\$343

Date	Atty/ Paralegal	Billing Entry	Time	Billing Rates	Total Fees
		with client; letter to ITW counsel			
2/8/2016	TRJ	Review and discuss defendants' responses to discovery requests; review defendants' document production; email client re: discovery requests	2.5	\$210	\$525
2/9/2016	RLA	Conferences with TRJ; telephone conference with client	0.6	\$490	\$294
2/15/2016	RLA	Letter to and letter from TRJ; letter to ITW counsel; letter from and letter to client	0.4	\$490	\$196
2/16/2016	RLA	Letters from and letters to W. Stockard; letter to TRJ	0.6	\$490	\$294
2/17/2016	RLA	Prepare for tomorrow's conferral call with relevant file review; conference with TRJ; letters from client	1.4	\$490	\$686
2/18/2016	RLA	Review and analysis in preparation for telephone conferral last night and this morning with review of ITW's objections, answers, and non-answers; conference with TRJ; participate in conferral call with ITW counsel and	3.4	\$490	\$1,666

Date	Atty/ Paralegal	Billing Entry	Time	Billing Rates	Total Fees
		TRJ; debrief; letters to, letters from and telephone conference with client; letter to and letter from ITW counsel			
2/18/2016	TRJ	Prepare for discovery conferral with opposing counsel re: discovery dispute; telephone conference with opposing counsel re: discovery dispute; discuss same; email opposing counsel re: discovery disputes	2.9	\$210	\$609
2/22/2016	TRJ	Email client re: proposed search terms; review client emails re: discovery responses; revise search terms	0.4	\$210	\$84
2/24/2016	RLA	Letters from and letters to TRJ; scan proposed motion for extension of discovery	0.6	\$490	\$294
2/24/2016	TRJ	Draft motion for extension of discovery period; review and revise same; discuss same	5.1	\$210	\$1,071
2/25/2016	TRJ	Review and revise motion for extension of discovery period; file same; draft responses to defendants' discovery	4.9	\$210	\$1,029

Date	Atty/ Paralegal	Billing Entry	Time	Billing Rates	Total Fees
		requests; telephone conference with client re: same			
2/26/2016	TRJ	Email correspondence with client re: discovery responses; review client emails; draft interrogatory response	3.9	\$210	\$819
2/29/2016	RLA	Letters to and letters from TRJ; letter from ITW counsel	0.7	\$490	\$343
2/29/2016	TRJ	Review additional correspondence from client re: additional potential witnesses; revise interrogatory responses	0.3	\$210	\$63
3/1/2016	TRJ	Email opposing counsel re: discovery dispute and outstanding issues; discuss same, telephone conference with chambers re: scheduling in-person hearing on discovery dispute; telephone conference with client re: discovery responses; review and revise discovery responses; email client re: same	4.1	\$210	\$861
3/2/2016	TRJ	Review and prepare client documents for production to defendants; discuss	3.1	\$210	\$651



Date	Atty/ Paralegal	Billing Entry	Time	Billing Rates	Total Fees
		same with client and summarize concerns re: same			
3/3/2016	TRJ	Draft motion to compel discovery; discuss same; discuss client documents and production of same telephone conference with judge's clerk re: scheduling hearing; email opposing counsel re: client's discovery responses	14	\$210	\$2,940
3/4/2016	TRJ	Review defendants' production; discuss same with client; discuss production of documents and email opposing counsel re: same	0.8	\$210	\$168
3/7/2016	RLA	Conference with TRJ re: Sean defendant's proposed confidentiality order; Letter from TRJ/ITW Counsel	0.6	\$490	\$294
3/7/2016	TRJ	Discuss revisions to proposed confidentiality agreement and protective order and production of client documents; prepare client documents for production; email opposing counsel re: same	1.5	\$210	\$315

Date	Atty/ Paralegal	Billing Entry	Time	Billing Rates	Total Fees
3/15/2016	RLA	Letter from client; conferences with TRJ	0.3	\$490	\$147
3/16/2016	TRJ	Review defendants' opposition to motion for discovery extension; research 11th Circuit law re: discovery where conflict of interest; telephone conference with opposing counsel re: additional discovery conferral	1	\$210	\$210
3/17/2016	RLA	Prepare for and participate with TRJ in telephone conferral with ITW Counsel; review and comment on ITW's opposition to Boysen motion for extension; Conference with TRJ	0.9	\$490	\$441
3/17/2016	TRJ	Discuss reply brief in support of motion to extend discovery; review search terms and discovery responses; telephone conference with opposing counsel re: search terms	1.5	\$210	\$315
3/22/2016	RLA	Read and comment on defendant's brief and cited cases; conference with TRJ; letter from client	1.1	\$490	\$539
3/23/2016	RLA	Letters from conference with TRJ;	0.2	\$490	\$98

Date	Atty/ Paralegal	Billing Entry	Time	Billing Rates	Total Fees
		Letter from S. Neba, ITW Counsel			
3/23/2016	TRJ	Draft reply in support of motion to extend discovery; telephone conference with opposing counsel re: search terms; discuss same; prepare for hearing re: motion to compel and motion to extend discovery	9	\$210	\$1,890
3/24/2016	RLA	Complete hearing preparation; conference with TRJ; represent client with TRJ at hearing before Judge Thrash; debrief with TRJ; help draft order requested by Judge Thrash; letter from and letter to client	2.3	\$490	\$1,127
3/24/2016	TRJ	Review filings re: motion to extend discovery and motion to compel discovery and prepare for hearing re: same; telephone conference with clerk re: restriction of inadvertently filed confidential documents; travel to/from hearing; appear for hearing;	6.5	\$210	\$1,365

Date	Atty/ Paralegal	Billing Entry	Time	Billing Rates	Total Fees
		discuss same; draft proposed order			
3/25/2016	RLA	Review draft order; conference with TRJ	0.4	\$490	\$196
3/25/2016	TRJ	Review and revise proposed order; discuss same; telephone conference with court reporter re: transcript of hearing; review defendants' objection to proposed order and discuss same	0.8	\$210	\$168
5/11/2016	TRJ	Discuss additional document requests to defendants; revise same; draft and file Rule 5.4 certificate of service of discovery	1.9	\$210	\$399
5/23/2016	RLA	Notice from court re: order entered in apparent error; letters from, letters to and conference with TRJ	0.4	\$490	\$196
5/23/2016	TRJ	Review order granting in part and denying in part motion to compel discovery; email re: same to RLA; telephone conference with judicial assistant re: order extending discovery period; strategize approach to opposing counsel re: discovery period	1.6	\$210	\$336

Date	Atty/ Paralegal	Billing Entry	Time	Billing Rates	Total Fees
5/24/2016	TRJ	Review and revise confidentiality order; strategize request to opposing counsel re: discovery extension; draft email re: same; email opposing counsel re: discovery; draft emergency motion to modify order; discuss same; email client re: status of discovery and court's order re: same; discuss opposing counsel's response to request for extension of time to conduct discovery	6.3	\$210	\$1,323
5/25/2016	RLA	Review ITW's counsel's negative; review court's order; coordinate noticing of Goldman deposition at O'Hare airport; letter from and letter to ITW counsel; telephone conference with TRJ; letter from, letter to and telephone conference with D. Boysen	1.2	\$490	\$588
5.25.16	TRJ	Draft notice of deposition of plan administrator; discuss same; email opposing counsel re: same; discuss outstanding	3.2	\$210	\$672

Date	Atty/ Paralegal	Billing Entry	Time	Billing Rates	Total Fees
		discovery and response to opposing counsel's refusal to comply with same; email opposing counsel re: discovery issues			
5/26/2016	RLA	Letter from and letter to TIW counsel; telephone conference with TRJ	0.4	\$490	\$196
5/26/2016	TRJ	Email opposing counsel re: outstanding discovery; strategize response to opposing counsel re: discovery scheduling	0.9	\$210	\$189
6/2/2016	RLA	Letters from, letters to and telephone conference with client regarding position logistics; conference with TRJ	0.7	\$490	\$343
6/8/2016	RLA	Letter from S. Neba; letter from David Boysen; letter from TRJ; call re ITW subpoena to Boysen's employer	0.4	\$490	\$196
6/10/2016	RLA	Letter from, letters to and telephone conference with client; letter to ITW counsel re subpoena; letters to and letter from court reporter	0.8	\$490	\$392

Date	Atty/ Paralegal	Billing Entry	Time	Billing Rates	Total Fees
6/15/2016	TRJ	Strategize responses to discovery disputes; email opposing counsel re: third party subpoena to client's current employer; review client personnel file with current employer and discuss same	0.6	\$210	\$126
6/20/2016	RLA	Conference with TRJ; work on deposition preparations	0.8	\$490	\$392
6/20/2016	TRJ	Draft topic outline for deposition of Elliot Goldman; research ERISA summary judgment cases and analyze disputed issues of fact	3.2	\$210	\$672
6/21/2016	RLA	Letter from and letters to client; conference with TRJ; work on deposition preparation	1.4	\$490	\$686
6/21/2016	TRJ	Draft outline for deposition of Elliot Goldman; review ITW documents in preparation for Goldman deposition; discuss same; email with client re: deposition; outline goals for deposition	5.8	\$210	\$1,218
6/22/2016	RLA	Work on Goldman deposition preparation; extensive document review;	9.8	\$490	\$4,802



Date	Atty/ Paralegal	Billing Entry	Time	Billing Rates	Total Fees
		conferences with TRJ; conferences with S. Burdette; travel to Chicago			
6/22/2016	TRJ	Review outline and prepare exhibits for deposition of Elliot Goldman; email client re: same; discuss same	2.2	\$210	\$462
6/23/2016	RLA	Complete preparation for Goldman deposition; conferences with client; take Goldman deposition; debrief with client; return to Atlanta	16.3	\$490	\$7,987
6/24/2016	RLA	Letter from client; debrief TRJ; debrief S. Burdette	0.8	\$490	\$392
6/24/2016	TRJ	Discuss deposition of Elliott Goldman and follow up from same; telephone conference with videographer re: deposition video	0.5	\$210	\$105
6/27/2016	RLA	Letter from and letter to videography firm; letters to and letter from client	0.3	\$490	\$147
6/28/2016	RLA	Review and annotate job differences; emails from client; conference with TRJ	0.6	\$490	\$294
6/29/2016	RLA	Letter from, telephone conference with and	0.6	\$490	\$294

Date	Atty/ Paralegal	Billing Entry	Time	Billing Rates	Total Fees
		conference with TRJ; letter to ITW counsel; letters from and letters to client			
7/5/2016	RLA	Letter from and letter to ITW counsel; letter from, letter to, conference with TRJ review Local Rule	0.6	\$490	\$294
7/5/2016	TRJ	Review local rules re: settlement conference before trial; email RLA re: same; discuss same; email opposing counsel re: LR 16.3 conference; discuss opposing counsel's response to request for Rule 16.3 conference; email correspondence re: settlement conference	0.7	\$210	\$147
7/6/2016	RLA	Letter from and letter to TRJ; letter to TRJ//ITW counsel; letters to court reporter re Goldman transcript	0.4	\$490	\$196
7/8/2016	RLA	Letters from and letters to ITW counsel W. Stockard; letter to TRJ; letters to and letter from client	0.7	\$490	\$343
7/14/2016	RLA	Prepare for tomorrow's meeting; letter to TRJ; letter to court reporter	0.6	\$490	\$294

Date	Atty/ Paralegal	Billing Entry	Time	Billing Rates	Total Fees
7/15/2016	RLA	Telephone conference with client; conference with TRJ; go with TRJ to court, required in-person; settlement meeting with ITW counsel; debrief with TRJ; telephone conference with client with TRJ to report on ITW's \$5000 offer	2.4	\$490	\$1,176
7/15/2016	TRJ	Telephone conferences with client re: settlement authority; travel to/from opposing counsel's office for settlement conference; attend settlement conference; discuss same	2.1	\$210	\$441
7/19/2016	TRJ	Review Goldman deposition transcript; telephone conference with opposing counsel	3.7	\$210	\$777
7/20/2016	RLA	Continued review of Goldman deposition transcript; letter from, letter to and telephone conferences with Shella Neba; conference with PRB	1.7	\$490	\$833
7/20/2016	PRB	Confer with RLA about making appearance; review case materials and discovery documents;	3.1	\$250	\$775

Date	Atty/ Paralegal	Billing Entry	Time	Billing Rates	Total Fees
		review settlement communications and confer with RLA and TRJ; supervise filing of notice of appearance			
7/21/2016	RLA	Complete Goldman transcript and exhibits, review and comment; conference with PRB; brief, review and draft motions for document production	2.3	\$490	\$1,127
7/21/2016	PRB	Begin work on motion to compel; review pertinent procedural history and key portions of deposition testimony; revise motion, confer with RLA, and supervise filing	4.9	\$250	\$1,225
7/21/2016	TRJ	Review Goldman deposition; discuss same and motion to compel discovery; draft motion to compel discovery; discuss same	4.6	\$210	\$966
7/22/2016	RLA	Review documents motion as filed; deposition billing logistics	0.6	\$490	\$294
7/24/2016	PRB	Boysen. Review communications regarding requested extension of time to	0.4	\$250	\$100

Date	Atty/ Paralegal	Billing Entry	Time	Billing Rates	Total Fees
		respond to summary-judgment motion; review settlement communications			
7/25/2016	PRB	Review settlement communications; review communications about summary judgment response	0.4	\$250	\$100
8/1/2016	TRJ	Review defendants' discovery responses and statement of material facts and strategize response arguments to motion for summary judgment; review client comments re: same	3.1	\$210	\$651
8/2/2016	TRJ	Discuss arguments in response to motion for summary judgment; review emails re: defendants' document production	0.2	\$210	\$42
8/4/2016	TRJ	Review defendants' motion for summary judgment; discuss same and strategy for responding to same; research ERISA summary judgment standard and cases re: denial of benefits	3.3	\$210	\$693
8/5/2016	PRB	Review document production and identify exhibits to	3.9	\$250	\$975

Date	Atty/ Paralegal	Billing Entry	Time	Billing Rates	Total Fees
		use in response to summary judgment; confer with opposing counsel about response deadline			
8/9/2016	KHOD	Review and analyze PRB's notes and research on motion for summary judgment; review and analyze background correspondence, pleadings, administrative record, and exhibits in preparation for summary judgment briefing; review and analyze Rule 56(d) motion and ITW's response to motion; meet with PRB re: draft of reply brief in support of motion to compel and letter to court re: extension	7.4	\$190	\$1,406
8/10/2016	PRB	Continue work draft summary judgment facts; contact deputy clerk to discuss how to address response timing	4.2	\$250	\$1,050
8/10/2016	KHOD	Determine procedures for contacting Judge Thrash's chambers; review scheduling order; review and analyze order on	4.4	\$190	\$836

Date	Atty/ Paralegal	Billing Entry	Time	Billing Rates	Total Fees
		motion to compel; discuss hearing on motion to compel with TRJ; review and analyze correspondence to RLA re: status of response filings; review and analyze transcripts of deposition and hearing on motion to compel; strategize reply to Plaintiff's response to Motion to Compel and discuss same with PRB			
8/11/2016	KHOD	Continue review and analysis of deposition of Elliot Goldman; prepare outline of response in support of motion to compel production of documents and Rule 56(d) motion and correspond with PRB re: same; review cases cited by Defendant and related research in support of opposition to motion to compel; review and analyze order denying motion to compel and correspond with PRB re: same and deadlines	4.8	\$190	\$912



Date	Atty/ Paralegal	Billing Entry	Time	Billing Rates	Total Fees
9/19/2016	KHOD	Prepare outline of MSJ response and confer with PRB and DDEN re: research and draft of MSJ response; prepare action item list and correspond with PRB and DDEN re: same; research additional case law in support of MSJ	5.4	\$190	\$1,026
9/21/2016	RLA	Letter from PRB; letter from client	0.2	\$490	\$98
9/21/2016	PRB	Continue work drafting response to summary judgment; confer with client about items for declaration	5.9	\$250	\$1,475
9/21/2016	KHOD	Continue preparing brief in opposition to ITW's MSJ; correspond with DDES re: factual background; discuss structure of opposition and outstanding research with PRB; research additional supporting case law	9.8	\$190	\$1,862
9/22/2016	RLA	Letter from PRB; start draft brief opposing summary judgment review	1.7	\$490	\$833
9/22/2016	PRB	Draft declaration for Mr. Boysen; revise	4.2	\$250	\$1,050

Date	Atty/ Paralegal	Billing Entry	Time	Billing Rates	Total Fees
		materials to incorporate items from declaration			
9/23/2016	RLA	Review and comment on draft; brief opposing Defendant's summary judgment motion; letter from and letter to PRB; letters from, letters to, telephone conference with KLH	1.9	\$490	\$931
9/23/2016	PRB	Confer with opposing counsel about page extension for response brief; review consent motion and supervise filing; confer with KHOD about filing deposition	1.1	\$250	\$275
9/23/2016	KHOD	Research and determine procedural requirements for submission of deposition transcript to court and prepare notice of filing of original transcript; correspond with PRB, support staff, court clerk, and court reporter re: obtaining original transcript	2.4	\$190	\$456
9/24/2016	RLA	Review and comment on draft declaration of David Boysen; letter to PRB and K. Hodges re: same	1.2	\$490	\$588

Date	Atty/ Paralegal	Billing Entry	Time	Billing Rates	Total Fees
9/25/2016	RLA	Review and comment on draft reply to ITW's statement of uncontested material facts; letter from PRB and K. Hodges	1.8	\$490	\$882
9/25/2016	PRB	Begin work drafting statement of additional material facts; review comments from Mr. Boysen on declaration and revise accordingly	6.3	\$250	\$1,575
9/26/2016	RLA	Review and comment on Boysen declaration; letter to and telephone conference with Boysen and PRB; letter to, telephone conference and conference with KLH	1.9	\$490	\$931
9/26/2016	PRB	Revise response brief; revise response to Defendants' statement of undisputed facts; revise statement of additional facts; revise declaration; revise cross-motion for summary judgment and notice of filing deposition; supervise filings and exhibits	12.7	\$250	\$3,175
11/21/2016	PRB	Finish research for sur-reply; draft sur-	8.2	\$250	\$2,050

Date	Atty/ Paralegal	Billing Entry	Time	Billing Rates	Total Fees
		reply brief and motion for permission to file; revise and supervise filing			
12/2/2016	RLA	Telephone conference with PRB; review and comment on sur-reply brief draft; letters to and letters from client	0.8	\$490	\$392
1/5/2017	PRB	Review summary judgment order, research grounds for award of fees, and confer with RLA	2.9	\$250	\$725
1/13/2017	PRB	Confer with RLA about appeal options; call deputy clerk to inquire about attorney fee award in judgment	0.6	\$250	\$150
1/17/2017	RLA	Conference with Paul Barsness; letter from Paul Barsness with draft reply to ITW for review regarding scheduling Defendants' filing of "emergency motion"	0.4	\$490	\$196
1/18/2017	RLA	Review Defendants' "emergency motion" and Paul Barsness' draft response; edit same and get filed in final; letters to and from Boysen; conference with Paul Barsness; telephone conference with Boysen	0.9	\$490	\$441

Date	Atty/ Paralegal	Billing Entry	Time	Billing Rates	Total Fees
2/1/2017	RLA	Review and edit draft brief opposing fees; review and edit draft declarations; conference with Paul Barsness; telephone conference with Paul Barsness; review and edit draft motion	0.8	\$490	\$392
2/6/2017	RLA	Defendant's bill of costs; telephone conference and meeting with Paul Barsness	0.2	\$490	\$98
2/19/2017	RLA	Letter from Paul Barsness; letter from client	0.2	\$490	\$98
6/26/2017	RLA	Letter to and telephone conference with client; conference with Paul Barsness	0.5	\$493.65	\$247
6/28/2017	RLA	Telephone conference with client; conference with and telephone conference with Paul Barsness; letter to ITW counsel	0.4	\$493.65	\$197
8/17/2017	JAW	Review Mr. Goldman's deposition transcript, review Severance Plan, review documents produced by ITW; draft fact section; telephone KMC re: extension to file brief	4.2	\$331.75	\$1,393

Date	Atty/ Paralegal	Billing Entry	Time	Billing Rates	Total Fees
8/18/2017	JAW	Draft mediation statement; draft appellant brief	4.4	\$331.75	\$1,460
8/20/2017	RLA	Letters from PRB and David Boysen; letter from W. Stockard	0.2	\$493.65	\$99
8/25/2017	JAW	Research 29 USC 1133(1) and specific reasons; revise Appellant Brief	1.8	\$331.75	\$597
8/28/2017	JAW	Revise Appellant Brief; draft request for extension to file brief from mediator	0.6	\$331.75	\$199
9/28/2017	PRB	Confer with RLA, review and revise mediation statement, and send to Mr. Boysen	1.1	\$307.99	\$339
10/1/2017	RLA	(9.5.17) Letters to and from client; letter from PRB	0.3	\$493.65	\$148
10/10/2017	RLA	Complete preparation for 11th Circuit Mediation with client and PRB. Participate in Mediation with Cliff Altekruze and ITW counsel, PRB and client, including conference with client and PRB; conference with Mediator, client and PRB; debrief with client and PRB; debrief with client	6.3	\$493.65	\$3,110

Date	Atty/ Paralegal	Billing Entry	Time	Billing Rates	Total Fees
10/11/2017	PRB	Call mediator to discuss briefing deadline; draft and send updated request; confer with JAW about draft brief	0.5	\$307.99	\$154
10/21/2017	JAW	Draft list of documents to be included in appendix; review Mr. Goldman's deposition regarding discussion of "job elimination"; review documents submitted by Defendants in support of motion for summary judgment (including declaration) re: alleged evidence of no "job elimination"	3.1	\$331.75	\$1,028
10/31/2017	RLA	Letter from PRB; letter to client; review final draft to be filed; notice of filing	0.7	\$493.65	\$346
3/5/2018	RLA	Telephone conference with Mark Cline; letter from 11th Circuit; letter to client; letter to PRB	0.6	\$493.65	\$296
8/13/2018	JAW	Review briefs on appeal and key cases; review summary of panel; attend mock argument	2.9	\$331.75	\$962
8/15/2018	RLA	Letter to and from client; participate in second moot court for	2.3	\$493.65	\$1,135



Date	Atty/ Paralegal	Billing Entry	Time	Billing Rates	Total Fees
		PRB; conference with client; review late filing by ITW counsel; letters to and from PRB regarding same			
8/16/2018	RLA	Conference with client; conference with PRB; complete preparation and attend oral argument by PRB in the Eleventh Circuit; debrief with client and RPB; debrief with client and Julie Wood; letter from client	3.3	\$493.65	\$1,629
<b>Total</b>			<b>356.4</b>		<b>\$111,552</b>

**EXHIBIT F—VAGUE BILLING ENTRIES**

*The following is a chart showing the aggregate amount of vague time across all of Boysen's billing entries:*

Name	Atty / Paralegal	Hours Summarized by Vague Billing Entries	Billing Rates	Total Fees
RLA - R. Lawrence Ashe, Jr.	Atty	54.3	\$490.00/\$493.65	\$26,638.03
PRB - Paul R Barsness	Atty	9.7	\$250.00/\$307.99	\$2,790.34
TJOH - Tiffany R. Johnson	Atty	1.1	\$210.00	\$231.00
JAW - Julie A. Wood	Atty	8.8	\$325.00/\$331.75	\$2,919.40
<b>Totals</b>		<b>73.9</b>		<b>\$32,579.00</b>

**EXHIBIT F—VAGUE BILLING ENTRIES**

*Below are all the detailed time entries showing vague time by Boysen's attorneys and their staff:*

Date	Atty/ Paralegal	Billing Entry	Time	Billing Rates	Total Fees
4/21/2014	RLA	Review e-mail from client	0.2	\$490.00	\$98
4/24/2014	RLA	Email exchange with D. Scruggs; telephone conference with M. Wexler re: D. Scruggs; review e-mail from D. Scruggs; e-mail exchange and telephone conference with D. Boysen	1	\$490.00	\$490
6/2/2014	RLA	Review e-mails from client	0.1	\$490.00	\$49
6/5/2014	RLA	Conference with PRB; Review and edit PRBs' draft letter to Mr. Scruggs; e-mail exchange with client	0.8	\$490.00	\$392
6/6/2014	RLA	Review e-mails from client; review e-mails from ITW counsel Scruggs	0.6	\$490.00	\$294
7/21/2014	RLA	Conferences with PRB	0.3	\$490.00	\$147
7/23/2014	RLA	Conference with PRB	0.2	\$490.00	\$98

Date	Atty/ Paralegal	Billing Entry	Time	Billing Rates	Total Fees
7/24/2014	RLA	Review e-mail from PRB to client	0.1	\$490.00	\$49
7/25/2014	RLA	Conference with PRB; review, edit and sign letter to Mr. Scriggs; review e-mail from PRB to client	0.4	\$490.00	\$196
8/5/2014	RLA	Review e-mail from J. Scruggs	0.2	\$490.00	\$98
8/6/2014	PRB	Review response from ITW	0.6	\$250.00	\$150
8/7/2014	RLA	Review e-mail from client; review emails from PRB	0.3	\$490.00	\$147
8/8/2014	RLA	Conference with PRB; review e-mail from PRB; telephone conference with D. Boysen and PRB; review e-mails from client; review, edit and send letter to ITW counsel	0.8	\$490.00	\$392
9/12/2014	RLA	Review e-mail from PRB to client	0.1	\$490.00	\$49
9/12/2014	RLA	Review e-mail from PRB to client	0.1	\$490.00	\$49
9/12/2014	PRB	Draft and send status update to Mr. Boysen	0.3	\$250.00	\$75
9/15/2014	RLA	E-mail exchange with client and PRB	0.2	\$490.00	\$98
11/7/2014	PRB	Confer with client about next steps	0.2	\$250.00	\$50

Date	Atty/ Paralegal	Billing Entry	Time	Billing Rates	Total Fees
12/31/2014	PRB	Confer with Mr. Boysen about next steps	0.1	\$250.00	\$25
1/18/2015	RLA	Review e-mail from client with attachments	0.2	\$490.00	\$98
1/27/2015	RLA	Email exchange with client	0.2	\$490.00	\$98
1/28/2015	RLA	Review e-mail from PRB to client	0.1	\$490.00	\$49
1/29/2015	RLA	Review e-mail from PRB; e-mail PRB and D> Boysen	0.3	\$490.00	\$147
1/30/2015	PRB	Email client and PRB	0.1	\$250.00	\$25
2/2/2015	RLA	Conference with PRB; review and edit PRB's draft letter to ITW	0.4	\$490.00	\$196
2/12/2015	TRJ	Review claims analysis; discuss same	0.8	\$210.00	\$168
2/23/2015	RLA	Telephone conference and conference with PRB; review and edit PRB memo re: contingent fee; review email from client; review e-mail from client to PRB	0.7	\$490.00	\$343
3/4/2015	RLA	Letter to/from and telephone conference with client	0.3	\$490.00	\$147
3/20/2015	RLA	Letter from PRB	0.1	\$490.00\$	49

Date	Atty/ Paralegal	Billing Entry	Time	Billing Rates	Total Fees
3/20/2015	PRB	Confer with TRJ and RLA about next steps	0.3	\$250.00	\$75
5/7/2015	TRJ	Review file and discuss complaint	0.2	\$210.00	\$42
5/19/2015	RLA	Letter to PRB	0.1	\$490.00	\$49
5/20/2015	TRJ	Review and prepare correspondence for mailing	0.1	\$210.00	\$21
5/26/2015	RLA	Letters from and letters to client; conference with PRB	0.4	\$490.00	\$196
5/27/2015	PRB	Final revisions; supervise filings	1	\$250.00	\$250
5/28/2015	RLA	Letters to and letter from client	0.2	\$490.00	\$98
6/11/2015	PRB	Confer with TRJ about service issues	0.1	\$250.00	\$25
8/13/2015	RLA	Consent Order	0.1	\$490.00	\$49
8/14/2015	RLA	Review and analysis of court order	0.2	\$490.00	\$98
8/17/2015	RLA	Letter to and letter from ITW counsel	0.2	\$490.00	\$98
9/18/2015	RLA	Letter from Grady Murdock	0.1	\$490.00	\$49
10/13/2015	RLA	Letter from Grady Murdock	0.1	\$490.00	\$49
10/14/2015	RLA	Letter to and letter from client	0.2	\$490.00	\$98
11/3/2015	RLA	Letters from ITW counsel; work with TRJ on issues	0.6	\$490.00	\$294
11/6/2015	RLA	Letter to and letter from client	0.2	\$490.00	\$98

Date	Atty/ Paralegal	Billing Entry	Time	Billing Rates	Total Fees
11/9/2015	PRB	Confer with client about upcoming hearing	0.3	\$250.00	\$75
11/11/2015	RLA	Conference with TRJ	0.3	\$490.00	\$147
11/18/2015	RLA	Letter to Grady Murdock	0.1	\$490.00	\$49
11/18/2015	RLA	Work on discovery list	0.6	\$490.00	\$294
11/18/2015	RLA	Letter from, letter to and telephone conference with client with TRJ	0.7	\$490.00	\$343
11/18/2015	RLA	Debrief with TRJ	0.4	\$490.00	\$196
11/20/2015	RLA	Letters to and letters from client and letters to TRJ	0.4	\$490.00	\$196
11/21/2015	RLA	Letter from and letter to client, cc TRJ	0.3	\$490.00	\$147
11/22/2015	RLA	Work on discovery; letters to and letter from client	0.8	\$490.00	\$392
11/23/2015	RLA	Entry of consent order pleading	0.1	\$490.00	\$49
11/25/2015	RLA	Letters to and letter from client	0.3	\$490.00	\$147
11/25/2015	RLA	Letters from and letters to client	0.3	\$490.00	\$147
11/28/2015	RLA	Letters to and letter from client	0.3	\$490.00	\$147
11/30/2015	RLA	Work on discovery; work on factual research	0.6	\$490.00	\$294
12/4/2015	RLA	Conference with TRJ	0.2	\$490.00	\$98



Date	Atty/ Paralegal	Billing Entry	Time	Billing Rates	Total Fees
12/22/2015	RLA	Letter from and letter to ITW counsel; letter to and letter from TRJ	0.3	\$490.00	\$147
1/12/2016	RLA	Letter to potential witness; letters from, letters to and telephone conference with client; conference with TRJ	0.9	\$490.00	\$441
1/15/2016	RLA	Letter from and letter to Wes Stockard; telephone conference with Mr. Stockard; letter to TRJ	0.8	\$490.00	\$392
1/27/2016	RLA	Telephone conference with witness	0.4	\$490.00	\$196
1/31/2016	RLA	Letter from client	0.2	\$490.00	\$98
2/1/2016	RLA	Letter to and letter from TRJ	0.2	\$490.00	\$98
2/2/2016	RLA	Letter from W. Stockard	0.2	\$490.00	\$98
2/4/2016	RLA	Client communications	0.3	\$490.00	\$147
2/8/2016	RLA	Conference with TRJ; telephone conference with client; letter to ITW counsel	0.7	\$490.00	\$343
2/9/2016	RLA	Conferences with TRJ; telephone conference with client	0.6	\$490.00	\$294

Date	Atty/ Paralegal	Billing Entry	Time	Billing Rates	Total Fees
2/10/2016	RLA	Letter from W. Stockard, ITW counsel	0.2	\$490.00	\$98
2/15/2016	RLA	Letter to and letter from TRJ; letter to ITW counsel; letter from and letter to client	0.4	\$490.00	\$196
2/16/2016	RLA	Letters from and letters to W. Stockard; letter to TRJ	0.6	\$490.00	\$294
2/19/2016	RLA	Letter to and letter from David Boysen and TRJ	0.3	\$490.00	\$147
2/22/2016	RLA	Letter to and letters from TRJ	0.3	\$490.00	\$147
2/23/2016	RLA	Letter from and letter to TRJ and client	0.2	\$490.00	\$98
2/29/2016	RLA	Letters to and letters from TRJ; letter from ITW counsel	0.7	\$490.00	\$343
3/7/2016	RLA	Conference with TRJ re: Sean defendant's proposed confidentiality order; Letter from TRJ/ITW Counsel	0.6	\$490.00	\$294
3/15/2016	RLA	Letter from client; conferences with TRJ	0.3	\$490.00	\$147
3/14/2016	RLA	Notice from court	0.1	\$490.00	\$49
3/23/2016	RLA	Letters from conference with	0.2	\$490.00	\$98

Date	Atty/ Paralegal	Billing Entry	Time	Billing Rates	Total Fees
		TRJ; Letter from S. Neba, ITW Counsel			
3/25/2016	RLA	Review draft order; conference with TRJ	0.4	\$490.00	\$196
3/30/2016	RLA	Letter from court reporter/TRJ	0.1	\$490.00	\$49
3/31/2016	RLA	Letter from TRJ	0.1	\$490.00	\$49
3/31/2016	RLA	Letter from ITW Counsel/Judge Thrash	0.3	\$490.00	\$147
4/25/2016	RLA	Conference with TRJ	0.1	\$490.00	\$49
5/2/2016	RLA	Conference with TRJ re: pending orders	0.2	\$490.00	\$98
5/18/2016	RLA	Letter from TRJ/ITW counsel	0.1	\$490.00	\$49
5/25/2016	RLA	Letters to and letters from ITW counsel; conference with TRJ	0.6	\$490.00	\$294
5/26/2016	RLA	Letter from and letter to TIW counsel; telephone conference with TRJ	0.4	\$490.00	\$196
6/2/2016	RLA	Letters from, letters to and telephone conference with client regarding position logistics; conference with TRJ	0.7	\$490.00	\$343
6/6/2016	RLA	Letters to and letters from client with proposed questions	0.9	\$490.00	\$441

Date	Atty/ Paralegal	Billing Entry	Time	Billing Rates	Total Fees
6/6/2016	RLA	Work on deposition logistics; letter from client	0.8	\$490.00	\$392
6/8/2016	PRB	Review information about subpoena request	0.2	\$250.00	\$50
6/12/2016	RLA	Letter from client with additional questions	0.2	\$490.00	\$98
6/21/2016	RLA	Letter from and letters to client; conference with TRJ; work on deposition preparation	1.4	\$490.00	\$686
6/24/2016	RLA	Letter from client; debrief TRJ; debrief S. Burdette	0.8	\$490.00	\$392
6/27/2016	RLA	Letter from and letter to videography firm; letters to and letter from client	0.3	\$490.00	\$147
6/29/2016	RLA	Letter from, telephone conference with and conference with TRJ; letter to ITW counsel; letters from and letters to client	0.6	\$490.00	\$294
7/1/2016	RLA	Letter from client	0.1	\$490.00	\$49
7/5/2016	RLA	Letter from and letter to ITW counsel; letter from, letter to, conference with TRJ review Local Rule	0.6	\$490.00	\$294

Date	Atty/ Paralegal	Billing Entry	Time	Billing Rates	Total Fees
7/5/2016	RLA	Letter from TRJ	0.1	\$490.00	\$49
7/6/2016	RLA	Letter from and letter to TRJ; letter to TRJ//ITW counsel; letters to court reporter re Goldman transcript	0.4	\$490.00	\$196
7/8/2016	RLA	Letters from and letters to ITW counsel W. Stockard; letter to TRJ; letters to and letter from client	0.7	\$490.00	\$343
7/14/2016	RLA	Prepare for tomorrow's meeting; letter to TRJ; letter to court reporter	0.6	\$490.00	\$294
7/18/2016	RLA	Telephone conference with TRJ re document motions	0.1	\$490.00	\$49
9/20/2016	RLA	Telephone conference with PRB re reply status	0.2	\$490.00	\$98
9/21/2016	RLA	Letter from PRB; letter from client	0.2	\$490.00	\$98
9/22/2016	RLA	Letter from PRB; start draft brief opposing summary judgment review	1.6	\$490.00	\$784
9/23/2016	RLA	Review and comment on draft; brief opposing Defendant's summary judgment motion; letter from	1.9	\$490.00	\$931

Date	Atty/ Paralegal	Billing Entry	Time	Billing Rates	Total Fees
		and letter to PRB; letters from, letters to, telephone conference with KLH			
9/26/2016	RLA	Review and comment on Boysen declaration; letter to and telephone conference with Boysen and PRB; letter to, telephone conference and conference with KLH	1.9	\$490.00	\$931
11/14/2016	RLA	Letters from with letters to client; initial scan of ITW filings	0.6	\$490.00	\$294
11/15/2016	RLA	Letters from and letters to PRB; letters to and letters from client; start ITW pleadings review	0.8	\$490.00	\$392
11/16/2016	RLA	Letters from client	0.3	\$490.00	\$147
11/22/2016	RLA	Letters from client; review court order	0.2	\$490.00	\$98
11/28/2016	RLA	conference with PRB	0.2	\$490.00	\$98
1/18/2017	RLA	Review Defendants' "emergency motion" and Paul Barsness' draft response; edit same and get filed in final; letters to and	0.9	\$490.00	\$441

Date	Atty/ Paralegal	Billing Entry	Time	Billing Rates	Total Fees
		from Boysen; conference with Paul Barsness; telephone conference with Boysen			
1/19/2017	RLA	Review ITW's latest filing; letter from Paul Barsness regarding draft reply to S. Neba call	0.4	\$490.00	\$196
1/20/2017	RLA	letters to and from client and Paul Barsness	0.6	\$490.00	\$294
1/14/2017	RLA	Telephone conference with Paul Barsness	0.1	\$490.00	\$49
1/30/2017	RLA	Letter from client	0.1	\$490.00	\$49
1/31/2017	RLA	Letter from Paul Barsness	0.2	\$490.00	\$98
2/6/2017	PRB	Confer with Mr. Boysen about next steps	0.2	\$250.00	\$50
2/19/2017	RLA	Letter from Paul Barsness; letter from client	0.2	\$490.00	\$98
2/20/2017	RLA	Conference with Marbury Rainer	0.3	\$490.00	\$147
2/23/2017	RLA	Review court notice	0.1	\$490.00	\$49
3/27/2017	RLA	letters to and from client and Paul Barsness	0.2	\$490.00	\$98
4/11/2017	RLA	Review court notice; letter to client regarding notice	0.2	\$490.00	\$98



Date	Atty/ Paralegal	Billing Entry	Time	Billing Rates	Total Fees
6/26/2017	RLA	Letter to and telephone conference with client; conference with Paul Barsness	0.5	\$493.65	\$246.83
6/27/2017	RLA	Letters to and from client	0.6	\$493.65	\$296.19
6/30/2017	RLA	Letter to and from client	0.1	\$493.65	\$49.37
7/11/2017	RLA	Letter from Mark Cline	0.1	\$493.65	\$49.37
7/11/2017	PRB	Confer with MLLA about status of research	0.3	\$307.99	\$92.40
7/12/2017	RLA	Letters to and from client	0.2	\$493.65	\$98.73
7/14/2017	RLA	Review court notice	0.1	\$493.65	\$49.37
7/18/2017	RLA	Review court notice	0.1	\$493.65	\$49.37
7/27/2017	RLA	Notices from 11th Circuit Court of Appeals	0.2	\$493.65	\$98.73
8/11/2017	PRB	Discuss potential appellate arguments with JAW	0.6	\$307.99	\$184.79
8/14/2017	RLA	Letters from PRB and client	0.1	\$493.65	\$49.37
8/16/2017	PRB	Confer with JAW about brief	0.2	\$307.99	\$61.60
8/21/2017	JAW	Letters to and from D. Boysen and PRB	0.2	\$331.75	\$66.35
8/22/2017	RLA	Letters from W. Stockard	0.2	\$493.65	\$98.73
8/23/2017	JAW	Draft Appellant Brief	5.6	\$331.75	\$1,857.80
8/25/2017	JAW	Research 29 USC 1133(1) and specific	1.8	\$331.75	\$597.15

Date	Atty/ Paralegal	Billing Entry	Time	Billing Rates	Total Fees
		reasons; revise Appellant Brief			
8/27/2017	JAW	Revise Appellant Brief	1.2	\$331.75	\$398.10
8/30/2017	RLA	Scheduling emails	0.4	\$493.65	\$197.46
9/1/2017	RLA	Review 11th Circuit emails	0.2	\$493.65	\$98.73
9/6/2017	RLA	Letters to and from client regarding scheduling	0.3	\$493.65	\$148.10
9/13/2017	RLA	Conference with PRB	0.1	\$493.65	\$49.37
9/26/2017	PRB	Mediation preparation	0.4	\$307.99	\$123.20
10/1/2017	RLA	(9.5.17) Letters to and from client; letter from PPRB	0.3	\$493.65	\$148.10
10/9/2017	RLA	Prepare for Mediation	1.6	\$493.65	\$789.84
10/9/2017	PRB	Mediation preparation	4.2	\$307.99	\$1,293.56
10/24/2017	RLA	Letter from client	0.2	\$493.65	\$98.73
11/3/2017	RLA	Letters to and from PRB, JAW and MCLI	0.3	\$493.65	\$148.10
11/10/2017	RLA	Letter to and from client	0.1	\$493.65	\$49.37
11/13/2017	RLA	Letter from 11th Circuit	0.1	\$493.65	\$49.37
12/18/2017	RLA	Letter from PRB	0.1	\$493.65	\$49.37
12/20/2017	PRB	Review notice of deficiency	0.1	\$307.99	\$30.80
12/21/2017	RLA	Letters to and from client	0.2	\$493.65	\$98.73
1/22/2018	RLA	Letter from PRB regarding draft reply brief	0.4	\$493.65	\$197.46

Date	Atty/ Paralegal	Billing Entry	Time	Billing Rates	Total Fees
3/5/2018	RLA	Telephone conference with Mark Cline; letter from 11th Circuit; letter to client; letter to PRB	0.6	\$493.65	\$296.19
3/6/2018	PRB	Confer with RLA and MCLI, and begin preparations for oral argument	0.5	\$307.99	\$154.00
5/14/2018	RLA	Letter from client	0.1	\$493.65	\$49.37
6/14/2018	RLA	Letters to and from 11th Circuit regarding calendaring oral argument	0.2	\$493.65	\$98.73
6/14/2018	RLA	Review information on oral argument	0.2	\$493.65	\$98.73
6/15/2018	RLA	Letter to and from client	0.2	\$493.65	\$98.73
7/31/2018	RLA	Letter from and conference with PRB	0.3	\$493.65	\$148.10
4/5/2019	RLA	Letter from client	0.2	\$493.65	\$98.73
4/8/2019	RLA	Telephone conference with PRB re reply status	0.2	\$493.65	\$98.73
<b>Totals</b>			<b>73.9</b>		<b>\$32,579.00</b>

**EXHIBIT G—TOTAL POTENTIAL FEE RECOVERY**

*The summary below reflects a calculation of the total amount of fees potentially recoverable:*

Total fees claimed by Boysen	\$318,964.50
Minus Fees Incurred During Administrative Claims Process	(\$14,603.00)
Minus Fees Incurred Related to Discovery, Discovery Motions, Settlement, Emergency Motions, Fee Motion and Bill of Costs, and Mediation	(\$127,097.80)
Remaining amount of potential recoverable fees:	\$177,263.70
Minus 2/3 reduction for unsuccessful arguments	(\$116,994.04)
Remaining amount of potential recoverable fees:	\$60,269.66
Minus Fees Incurred for Clerical Work	(\$38,377.16)
Remaining amount of potential recoverable fees:	\$21,892.50
Minus 15% reduction for Blockbilling	(\$3,283.87)
<b>Total Potential Recoverable Fees If Fees Are Awarded:</b>	<b>\$18,608.62</b>

**CASE NO. 17-13145**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

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**DAVID L. BOYSEN,**  
*Plaintiff/Appellant,*

**v.**

**ILLINOIS TOOL WORKS INC. SEPARATION PAY PLAN  
AND ILLINOIS TOOL WORKS, INC.,**  
*Defendants/Appellees.*

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**A DIRECT APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA**

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**REPLY MEMORANDUM IN SUPPORT OF APPELLANT'S  
APPLICATION FOR ATTORNEYS' FEES**

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**R. Lawrence Ashe, Jr.,  
Georgia Bar No. 024500  
Paul R. Barsness  
Georgia Bar No. 597107  
Julie A. Wood  
Georgia Bar No. 023749  
PARKER, HUDSON, RAINER & DOBBS LLP  
303 Peachtree Street, NE  
Suite 3600  
Atlanta, Georgia 30308  
Tel: 404-523-5300 Fax: 678-533-7766**

*Attorneys for Appellant/Cross-Appellee David L. Boysen*

**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE  
DISCLOSURE STATEMENT**

There are no changes from the Certificate of Interested Persons and Corporate Disclosure Statement filed on July 25, 2017.

## INTRODUCTION

Boysen sought ERISA benefits, claiming his job was permanently eliminated in connection with Defendants' corporate restructuring. In the administrative review process, Defendants repeatedly refused to consider highly relevant information in the face of multiple direct requests. Boysen warned Defendants he would have to file a lawsuit to get access to the documents and force consideration by the Plan Administrator. With this Court's judgment, that will now happen.

Having achieved "some success on the merits" (the standard in *Hardt*), Boysen is eligible for a fee award now. He need not wait more years in connection with a future benefits determination. Because this Court opinion confirms Defendants were overwhelming culpable for their failure to afford Boysen a full and fair review—and the other factors similarly support a fee award—an award is appropriate.

Boysen seeks a reasonable amount, comparatively less than what Defendants represented was reasonable in *their* fee request. Should this Court choose to remand the factual lodestar analysis, that sub-issue does not impact Boysen's fee entitlement. The First Circuit recently concluded in *Gross* that the appellate court should determine entitlement. The District Court can determine the total amount.



**I. This Court is best positioned to determine fee eligibility. The outcome of supplemental proceedings will not change Boysen's eligibility for fees for the phase of the case that concluded with this Court's judgment.**

As the First Circuit concluded in *Gross*, fee eligibility should be determined by the appellate court, not delayed for years in connection with possible *future* eligibility for *additional* fees connected with supplemental proceedings. *See Gross v. Sun Life Assur. Co. of Canada*, 763 F.3d 73, 81 (1st Cir. 2014) (“the outcome of the supplemental proceedings ordered by our remand will not change [the claimant’s] eligibility for fees *for the phase of the case that concluded with that judgment*.”). This Court should decide Boysen’s entitlement to fees, even if it remands the sub-issue of the reasonableness of the amount of fees sought. *Id.* at 86 (issuing judgment entitling claimant to fee award, remanding lodestar analysis).

“Most courts considering the question left unanswered in *Hardt* have held that a remand to the plan administrator for review of a claimant’s entitlement to benefits, even without guidance favoring an award of benefits or an actual grant of benefits, is sufficient success on the merits to establish eligibility for fees under section 1132(g)(1).” *Gross*, 763 F.3d at 77. All three Circuit Courts to address the eligibility issue, and the vast majority of District Courts, have concluded that a Claimant who secures a remand has achieved sufficient success on the merits to be eligible to recover fees. *See Motion*, 7-9. The First Circuit has characterized the

remand outcome as the “best outcome” a claimant can “reasonably hope to achieve from the courts.” *Gross*, 763 F.3d at 76-77.

Boysen established that ITW’s Plan Administrator violated ERISA and the Plan’s requirements. Just like the claimant in *Olds v. Ret. Plan of Intern. Paper Co.*, 2011 WL 2160264 (S.D. Ala. June 1, 2011), Boysen “present[ed] a claim that the defendant violated his rights and the court rule[d] that the defendant did violate those rights.” Motion, 9. It was not an irrelevant or purely procedural victory. He accomplished what he set out to do.<sup>1</sup> Notably, Judge Selya in dissent in *Gross*, who sides with the minority opinion that purely procedural victories are insufficient, explained in his decision that denial of a full and fair review (which occurred with Boysen, but was not found in *Gross*) changes the equation. The requirements of such a review afford *substantive* protections to claimants beyond mere procedural protections. *See Gross*, 763 F.3d at 87 & n.11.

The two cases ITW cites in making its “technical win” argument are not on point. In *Vivas v. Hartford Life & Accident Ins. Co.*, 2013 WL 5226720 at \*3

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<sup>1</sup> Defendants claim Boysen “has not even achieved a remand to the plan administrator.” Objection, n. 4. This is contrary to what Defendants have represented to the District Court. When the District Court entered an Order adopting the judgment of this Court, Defendants moved to vacate the Order, telling the District Court that it could ignore this Court’s remand instruction to “ensure” Boysen received the discovery to which he was entitled and, based simply on the record, go ahead and remand to the Plan Administrator who could address the relevance of documents. *See* Doc. 101 at 2, attached as **Exhibit A**. Defendants have told the District Court it has no choice but to remand. *Id.* at 13-15.

(S.D. Fla. June 17, 2013), there was no finding the plan administrator had refused to consider relevant evidence, just that it did not follow certain regulations in its review. As for *Salvatori v. Westinghouse Elec. Corp.*, 190 F.3d 1244, 1245 (11th Cir. 1999), it was decided years before *Hardt* and does not concern a remand. It was an age discrimination case where there was no judgment, as the plaintiff had proved discrimination but no injury.

ITW tries to denigrate Boysen's success, implying the appeal involved no issues of importance and was simply an extension of clear precedent. *See* Objection, 11 & n.2. Boysen need not establish importance to secure a fee award, but this argument is refuted by ITW's own sworn counsel certification, supporting the extraordinary request for rehearing *en banc*, that the appeal involved "a question of exceptional importance." *See* Petition, Statement of Counsel. ITW argued that this Court's decision was "critical to plan administrators and participants." Petition, 10. *See also id.*, 15-16 (describing appeal as one involving issue of "exceptional national importance" with "major implications for ERISA plan administrators and, consequently, for benefit plans themselves.").

Finally, contrary to Defendants' assertion that fee eligibility is presumptively for the District Court to determine in the first instance, this Court has held that it can and should determine eligibility and issue fee awards when there is an appeal. *See Nachwalter v. Christie*, 805 F.2d 956, 961 (11th Cir. 1986)

(“In fact, the statement in subsection 1132(g)(1) that fee awards are to be determined by ‘the court,’ as opposed to ‘the district court,’ suggests that Congress intended for circuit courts also to make fee awards.”)

## **II. A fee award through this stage of the litigation is appropriate.**

Defendants do not dispute their ability to satisfy an award (the second factor), and their *en banc* petition admits that the issues involved in the appeal involve significant legal questions that impact all participants and beneficiaries (fourth factor). The other three factors also support a fee award.

### **A. The first and fifth factors support a fee award.**

This Court determined the Plan Administrator violated ERISA, the Plan’s own terms, and engaged in conduct that was “antithetical to the plan administrator’s fiduciary duty” by “repeatedly refus[ing] to consider highly relevant evidence.” Opinion, 25, 27. This Court was highly critical of the Plan Administrator’s review process, which “effectively made it impossible for Mr. Boysen to oppose the [denial of benefits].” *Id.*, 22.

Defendants were overwhelming culpable for their failure to afford Boysen a full and fair review. The Plan Administrator stubbornly and repeatedly refused to consider highly relevant information in the face of multiple direct requests by

Boysen. This Court’s opinion does not paint the rosy picture of the review process that ITW continues to tout in its Objection.<sup>2</sup>

Defendants contend that, “[t]his is not a case in which the Plan ignored claimant’s theory...” (Objection at 10), but that is precisely what occurred. This Court concluded that Defendants violated ERISA by “refus[ing] to investigate the restructuring that—as we now know—some ITW employees had already conceded occurred....” Opinion, 22. Defendants also rely on select case law denying fees under special circumstances where the Plan Administrator acted reasonably (*see* Objection, 13-15). This Court found the Plan Administrator’s decisions “highly unusual.” Opinion, 26. He “repeatedly refused to consider highly relevant evidence, or evidence which contradicted (or potentially conflicted with) his decision.” *Id.* at 26. He “ignore[d] evidence that has a direct bearing on, or refutes, his findings.” *Id.* at 23. He “refuse[d] to conduct additional investigation when it has been brought to his attention that relevant documents almost certainly exist.” *Id.*

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<sup>2</sup> Defendants’ reliance on *Geiger v. Pfizer*, 549 F. App’x 335, 339 (6th Cir. 2013) is misplaced. In *Geiger*, the claimant shared responsibility for the relevant documents not being in the record, as claimant’s counsel had the ability to submit them. *Id.* at 338. Notably, *Geiger* is yet another Circuit court decision concluding that remand for a full and fair review is sufficient success on the merits to establish eligibility for fees. *Id.* at 337.

**B. The third factor (deterrence) support a fee award.**

In *Gross*, the First Circuit held a fee award could have “a desirable deterrent effect,” even though the plan administrator did not deny the claimant a full and fair review. *Gross*, 763 F.3d at 84-85. A fee award for Boysen will help ensure other claimants are not similarly disadvantaged. *See Olds*, 2011 WL 2160264, \*4 (holding fee award “can only serve to make the Plan more attentive to its statutory obligation to actually consider claimants’ claims and reduce the Plan’s incentives to gloss over them”).

**III. Boysen is entitled to recover the amount sought.**

Boysen’s \$318,961.50 in fees and \$5,590.49 in expenses are reasonable, recoverable and supported by the evidence submitted with his application. Defendants do not dispute that the rates used by Boysen’s attorneys are “reasonable.”<sup>3</sup> Instead, Defendants argue Boysen’s fees should be reduced by 94% to 98% from \$318,961.40 to between \$5,000 and \$18,000 because: (1) some of the “arguments” Boysen made in pursuit of his ERISA claim were “unsuccessful,” (at least until appeal); (2) some of the time spent by Boysen’s lawyers was for alleged clerical work; (3) time spent for pre-litigation matters is not recoverable, and (4) the time entries include some “block billing” and some vague entries. Defendants’

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<sup>3</sup> ITW and the Plan make one comment about a rate increase for one of Boysen’s lawyers during the five year length of this action, *see* Response, n. 14, but do not argue that any of rates charged were not reasonable.

arguments are not supported by law.

**A. This Court can determine entitlement to fees even if it wishes to remand the lodestar analysis.**

Lodestar disputes should not distract from the fundamental issue of fee entitlement based on this Court's judgment. The First Circuit determined the claimant's entitlement to fees and then left the lodestar analysis to the district court. *See Gross*, 763 F.3d at 86.

**B. Boysen won on appeal, and his fee award should not be reduced by \$244,000.00 based on alleged "unsuccessful" claims.**

Defendants concede that Boysen has asserted only one claim in this action. *See* Objection, 1. This Court held that Defendants violated ERISA by failing to provide Boysen with a full and fair review of that single claim. ***Thus, Boysen has not asserted any unsuccessful claims in this action, and he succeeded in establishing that he was denied a full and fair review of that claim.*** All of the attorneys' fees and costs incurred by Boysen through appeal were in pursuit of his single ERISA claim. Remarkably, Defendants seek a reduction by approximately \$244,000 (or by 76%) because some of the "arguments" Boysen made to support this winning claim were not "successful" (initially). Labeling Boysen's difficulty in securing access to documents in discovery unsuccessful when this Court has now determined that the restructuring documents, compensation documents for Boysen's replacement, and documents regarding his satisfactory performance are



“highly relevant” and has issued express remand instructions to “ensure” that Boysen gets access to such documents prior to any remand to the Plan Administrator is frivolous.

**C. Defendants’ attempt to designate over \$38,000 of fees as “clerical work” fails.**

These fees were billed by attorneys for work that was clearly not clerical. *See Scelta Delicatessen Support Servs., Inc.*, 203 F. Supp.2d 1328, 1334 (M.D. Fla. 2002) (stating clerical work is secretarial in nature such as “gathering materials,” “copying,” and “mailing”). For example, Defendants challenge 12.7 hours of time (for a total of \$3,175) for the following attorney work on Sept. 26, 2016:

Revise response brief; revise response to Defendants' statement of undisputed facts; revise statement of additional facts; revise declaration; revise cross-motion for summary judgment and notice of filing deposition; supervise filings and exhibits.

Response, Ex. D.

A review of these entries clearly indicate that Defendants are trying improperly to classify attorney work as clerical just to reduce the award.

**D. The only potential reduction involves pre-litigation fees.**

Citing *Kahane v. Unum Life Ins. Co. of Am.*, 563 F.3d 1210 (11th Cir. 2009), Defendants argue that Boysen should not be able to recover for fees for work performed during the administrative review and appeal process. *Kahane* so holds. But another case from this Court (cited by Boysen in his Application) supports an

award of pre-litigation fees incurred prior to filing an ERISA claim. *See Wright v. Hanna Steel Corp.*, 270 F.3d 1336 (11th Cir. 2001). Thus, there is authority for inclusion of pre-litigation fees. *Kahane* recognizes Supreme Court precedent for awarding pre-litigation fees when connected and necessary to the litigation. As the Court acknowledged in its opinion that “pre-suit correspondence [was] central to [its] analysis,” Opinion, 5, an award of pre-litigation fees is appropriate in *this* case.

**E. Defendants’ other collateral attacks are false and misleading.**

Defendants’ creative calculations to reduce recoverable fees to nearly zero are misleading. Defendants often “double” or even “triple” subtract certain fees from the total amount recoverable. For example, Defendants challenge the \$14,603 incurred pre-suit. *See* Response, Ex. A. Then, Defendants challenge all “clerical” entries, which includes pre-suit entries. *See* Response, Ex. D. Defendants then seek an across-the-board 15% reduction for “block billing” and vague entries, including entries on prior exhibits.<sup>4</sup> This Court should reject Defendants’ brazen attempt to reduce Boysen’s reasonable fees to virtually zero.

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<sup>4</sup> This Court should not reduce the award for alleged block billing. The entries, like the one quoted above, give “sufficient detail and probative value to enable this Court to determine with a high degree of certainty that such hours were actually or reasonable expended.” *Shipley v. Hypercom Corp.*, 2012 WL 12871631, at \*12 (N.D. Ga. May 31, 2012). Defendants conceded as much when they requested fees with similar descriptions. *See, e.g.*, Doc. 79-2, p. 12 (7.1 hours to “continue drafting memorandum in support of summary judgment”).

ITW makes a short “alternative” argument that all entries that do not expressly state “full and fair review” should not be allowed, reducing the total to approximately \$5,000. Objection, 18. This Court should completely disregard this argument that entries for a case that has been pending for over four years should be rejected simply because they do not include certain keywords.

### **CONCLUSION**

After several years, and hundreds of thousands of dollars, Boysen succeeded in demonstrating that he was denied a full and fair review of his claim. He achieved what the First Circuit has characterized as the “best outcome” a claimant in his situation can “reasonably hope to achieve from the courts.” He respectfully requests an Order establishing his entitlement to all fees sought. Should this Court decide to remand the lodestar analysis, Boysen respectfully requests that the Order confirm his entitlement to an amount to be determined by the District Court.

Respectfully submitted, this 12th day of August, 2019.

**PARKER, HUDSON, RAINER & DOBBS LLP**

By: /s/ R. Lawrence Ashe, Jr.  
R. Lawrence Ashe, Jr.  
Georgia Bar No. 024500  
Paul R. Barsness  
Georgia Bar No. 597107  
Julie A. Wood  
Georgia Bar No. 023749  
303 Peachtree St. NE

Suite 3600  
Atlanta, GA 30308  
Telephone: 404-523-5300  
Facsimile: 404-522-8409

*Counsel for Appellant/Cross Appellee*

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME  
LIMITATION, TYPEFACE REQUIREMENTS  
AND TYPE STYLE REQUIREMENTS**

This brief complies with the type-volume limitation of Fed. R. App. P. 27(d)(2) because the substance of the brief that was produced using a computer does not contain more than 2,600 words. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in proportionally spaced typeface using Microsoft Office Word 2010 in 14-point Times New Roman type.

By: /s/ R. Lawrence Ashe, Jr.  
R. Lawrence Ashe, Jr.  
Georgia Bar No. 024500

# EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

DAVID L. BOYSEN,

Plaintiff,

v.

ILLINOIS TOOL WORKS INC.  
SEPARATION PAY PLAN, and  
ILLINOIS TOOL WORKS, INC.,

Defendants.

CIVIL ACTION NO.

1:15-cv-01900-TWT

**DEFENDANTS' MOTION TO VACATE COURT'S ORDER, OR IN THE  
ALTERNATIVE, MOTION FOR CLARIFICATION OF COURT'S ORDER**

Defendants Illinois Tool Works Inc. Separation Pay Plan (the “Plan”) and Illinois Tool Works Inc. (“ITW,” and, collectively, “Defendants”) move to vacate the Court’s Order, entered June 21, 2019 (Dkt. No. 100) (the “Order”)<sup>1</sup>, or, in the alternative, for clarification of the Order, which adopted the mandate of the United States Court of Appeals for the Eleventh Circuit and made it the judgment of this Court. As explained below, the Order reflects an inadvertent mistake as it purports to prematurely adopt the mandate as a judgment before following the Eleventh

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<sup>1</sup> The Order has a signature date of June 20, 2019, but was not entered on the Court’s docket and distributed to the parties until June 21, 2019.



Circuit’s instructions on remand and without recognizing that the Eleventh Circuit did not address the merits of Plaintiff’s claim. The result is procedural confusion regarding the status of this action and of Plaintiff’s claim. Further, the Court’s record is clear that Defendants fully complied with the Court’s prior discovery orders . And the governing plan documents provide that the plan administrator for the Plan should gather facts and decide benefit claims, making remand to the plan administrator appropriate for further processing of Plaintiff’s claim in accordance with the Eleventh Circuit’s instructions. Accordingly, Defendants respectfully request that the Court vacate the Order, or alternatively, clarify the Order to comply with the Eleventh Circuit’s instructions by verifying that all ordered discovery has been tendered and that Plaintiff’s claim is remanded to the plan administrator for decision in accordance with the Eleventh Circuit’s Opinion.

## **I. INTRODUCTION**

This Court previously entered summary judgment in favor of Defendants. (*See* Dkt. Nos. 67, 86.) Plaintiff appealed to the United States Court of Appeals for the Eleventh Circuit. (*See* Dkt. No. 87.) The Eleventh Circuit vacated this Court’s summary-judgment award, finding that the administrative record on which the plan administrator decided the claim was not complete and further review of Plaintiff’s claim was necessary, and remanded the case to this Court “for further review of

[Plaintiff’s] benefits claim.” (*See* Dkt. No. 97.) The Eleventh Circuit also instructed that before “addressing [Plaintiff’s] ERISA claim on the merits, and before deciding whether a remand to the plan administrator is warranted, the district court should ensure that the plan administrator has provided Mr. Boysen with all the discovery previously ordered.” (*Id.*) Thus, the Eleventh Circuit vacated this Court’s prior judgment and “**REMANDED WITH INSTRUCTIONS.**” (*Id.* (capitalization and emphasis in original).)

Following issuance of the Eleventh Circuit Opinion, this Court entered the Order, adopting the Eleventh Circuit’s “mandate” and making it the judgment of this Court. (*See* Dkt. No. 100.) But the Order and the resulting judgment is premature because it does not account for further processing of the case in accordance with the Eleventh Circuit’s remand instructions. This appears to be the result of inadvertent mistake or oversight. The Court’s Local Rules provide a standard process through which the clerk of the Court submits a template proposed Order to adopt as the judgment of this Court a mandate of the Eleventh Circuit ordering remittitur. (*See* L.R. 58.3(B).) Here, it appears the Court simply entered the clerk’s proposed order without realizing it failed to take into account that the Eleventh Circuit’s remand instructions and that a merits decision still needs to be made on Plaintiff’s benefit

claim. Thus, vacating or clarifying the Order (as contemplated by Local Rule 53(B)) is appropriate.

In addition, if the Court clarifies the Order, it should amend the Order and any incorporated judgment to: (a) reflect that Defendants have fully complied with this Court's prior discovery orders; and (b) clarify that Plaintiff's claim is remanded to the plan administrator for further review in accordance with the guidance the Eleventh Circuit provided in its Opinion and the terms of the Plan. Prior submissions to the Court confirm that Defendant fully complied with its prior discovery orders. And, the Plan's terms specifically provide that the plan administrator is to review and decide all claims for benefits and has the sole and exclusive discretionary authority to do so. Therefore, the proper party to gather and review the additional evidence and make a new decision on Plaintiff's benefit claim as instructed by the Eleventh Circuit is the plan administrator.

## **II. LEGAL STANDARD**

Federal Rule of Civil Procedure 60 provides for relief from a court judgment or order where the judgment or order results from a mistake, oversight, omission, or clerical mistake. F.R.C.P. 60(a). In these circumstances, a court may correct the mistake, oversight, or omission *sua sponte* and without notice, to be sure that the order or judgment is accurate. Further, a party may be relieved from an order or

judgment for reasons of mistake or inadvertence or for any other reason that justifies relief. *Id.* Alternatively, Federal Rule of Civil Procedure 59 provides that parties may move to alter or amend a judgment entered by the Court.

### **III. RELEVANT FACTS & PROCEDURAL BACKGROUND**

This case involves a claim under ERISA § 502(A)(1)(B) for severance benefits under an ERISA plan. As ERISA requires, before litigation, Plaintiff's claim went through a claims-administration process mandated by the Plan and overseen by the plan administrator. The plan administrator (or its delegate) is specifically granted full and *exclusive* authority under the terms of the Plan to decide all claims for benefits. (Administrative Record (referred to herein as "AR") (Dkt. # 40), 10-11, § 6.1.

Before this Court, the parties engaged in written discovery and briefed and argued motions to compel discovery. Ultimately, Defendants moved for and this Court awarded them summary judgment and dismissed Plaintiff's claim with prejudice. (Dkt. Nos. 84, 85, 86.) The Court found that the "documentary record is absolutely clear that the Plaintiff was fired for poor performance. There is no evidence that this was a pretext for elimination his position," and because only job eliminations qualified for severance benefits under the Plan, Plaintiff was not due benefits. (*See* Dkt. Nos. 67, 86.)

Plaintiff appealed to the Eleventh Circuit. The Eleventh Circuit vacated the summary-judgment award, finding that the pre-litigation administrative-claims process was procedurally flawed. (Dkt. No. 97.) The Eleventh Circuit held that Plaintiff did not receive a full and fair review of his claim due to concerns about the completeness of the underlying administrative record. (*Id.*) The Eleventh Circuit ended its analysis after reaching that procedural determination, and did not make any holding on the merits of Plaintiff's claim for severance benefits. (*Id.*) The Eleventh Circuit remanded the case to this Court with instructions. (*Id.*)

Shortly after the Eleventh Circuit issued that Opinion, the clerk of this Court issued a standard, template proposed order – under Local Rule 58.3(B) – adopting the mandate of the Eleventh Circuit and making the mandate the judgment of this Court. (Dkt. No. 99.) The Court executed the clerk's proposed order the next day on June 20, 2019, with no modifications. (Dkt. No. 100.)

#### **IV. LEGAL ARGUMENT AND ANALYSIS**

##### **A. The Court's Order Appears to Be the Result of Mistake, Oversight, Omission, or Clerical Mistake.**

Local Rule 58.3(B) provides a mechanism through which, after an appeal, the clerk may issue a proposed order making the Appellate Court's "remittitur the judgment of this Court." Thus, following issuance of the Eleventh Circuit Opinion, the clerk generated a standard proposed order adopting the Eleventh Circuit mandate

and making it the judgment of this Court, and provided it to the Court for entry. It seems the Court entered the standard, template proposed order prepared by the clerk in accordance with Local Rule 58.3 – without realizing that the proposed order failed to account for the Eleventh Circuit’s remand instructions and the procedural posture, which lacks any ruling on the merits of Plaintiff’s claim for benefits.

In some cases, an Appellate Court’s opinion vacating, modifying, or reversing judgment may be wholesale adopted by this Court and judgment issued, but this is not such a case. Here, the Eleventh Circuit did not address the merits of Plaintiff’s claim for benefits or order judgment for either party. Instead, the Opinion simply vacated the summary judgment award and gave directions for there to be a “further review” of Plaintiff’s claim and additional steps that should be taken before such review. The Order inadvertently neglected to address these matters. It does not address whether Defendants have complied with discovery orders and whether remand to the plan administrator is appropriate, and makes no determination on the merits of Plaintiff’s claim.

Federal Rule of Civil Procedure 60(a) provides for vacating orders or judgments, even *sua sponte* and without notice, when mistake or oversight occurs as it did here. As a result, the Court should vacate the Order to correct and address the

inadvertent mistake or oversight in adopting the clerk's incorrect proposed order, and clarify next steps consistent with the Eleventh Circuit's remand instructions.

**B. The Court's Order Is Premature at this Time and Necessitates Clarification.**

The Order is also due to be vacated or, in the alternative, clarified and amended, because it is procedurally premature. The Eleventh Circuit's Opinion instructed this Court to: (1) ensure Defendants provided Plaintiff with discovery as ordered; and (2) further consider the merits of Plaintiff's claims and whether remand to the plan administrator was appropriate. This has not yet occurred, making the Court's judgment in the Order premature and procedurally improper. When an appellate court remands a matter with explicit instructions, the instructions must be carried out before entry of a final judgment. *See Winn-Dixie Stores, Inc. v. Dolgencorp, LLC*, 881 F.3d 835, 844 (11th Cir. 2018) (finding reversible error when district court failed to follow its instructions). Failure to do so can lead to yet another appeal and reversal and remand. *Norris v. Berryhill*, No. 6:16-cv-2040-Orl-37JRK, 2018 WL 798221 at \*10 (M.D. Fla. Feb. 5, 2018) (failure to follow explicit remand instructions results in reversal and remand in order to comply with appellate court's instructions).

Additionally, it is unclear what – other than the reversal of summary judgment – if anything, has been adjudicated by the Court's adoption of the Eleventh Circuit



Opinion as its judgment. The Eleventh Circuit Opinion only addresses the procedural aspects of Plaintiff's claim. There is no ruling on the merits of the claim, no substantive relief has been awarded to either party, and there is no reference to damages, a monetary award, or dismissal of the claim or suit. The Order leaves open questions as to the appropriate next steps in this proceeding. For those reasons, at a minimum, further clarification or amendment of the Court's Order and its included judgment is necessary to apprise the parties as to how to proceed and to bring finality to this litigation.

**C. The Court Should Amend the Order to Provide for Remand of Plaintiff's Claim to the Plan Administrator for Further Processing.**

If the Court elects to amend the Order, it should amend the Order and any incorporated judgment to reflect that Defendants have fully complied with this Court's prior discovery orders. It should also clarify that Plaintiff's claim is remanded to the plan administrator for further review in accordance with the guidance in the Eleventh Circuit's opinion and the terms of the Plan.

The Court already has information before it confirming that Defendant has fully complied with all its prior orders regarding discovery. Specifically, Plaintiff filed a Motion to Compel Discovery seeking abundant information outside the administrative record. Plaintiff also requested depositions of Monte Hammouri

(Plaintiff's former supervisor), Ken Caskey (the ITW employee hired to replace Plaintiff), and Elliot Goldman (the Plan Administrator).<sup>2</sup> (*See* Dkt. # 19 (the "Original Motion to Compel"); Dkt. # 21 ("Defs' Resp. to Original Motion to Compel").)

The parties fully briefed that motion, and presented oral argument. The Court issued an oral ruling denying Plaintiff's Motion to Compel in every respect save two: (1) it extended the discovery period to permit Plaintiff additional time to depose the Plan Administrator, Elliot Goldman (who Defendants had already agreed to produce); and (2) it instructed Defendants that if they had not already fully done so, they should produce all records concerning the documented reasons for Plaintiff's termination of employment from ITW. (*See* Transcript of Motions Hearing, March 24, 2016, Dkt. # 24, 16:11-20; Order on Motions Hearing, Dkt No. 26.)<sup>3</sup>

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<sup>2</sup> Defendants had already agreed to make Mr. Goldman available for deposition; however, Plaintiff first noticed and then unilaterally cancelled this deposition. Eventually, the deposition of Mr. Goldman proceeded after the ruling on Plaintiff's Motion to Compel.

<sup>3</sup> Undeterred by the Court's definitive ruling in this regard, Plaintiff then submitted a proposed order for the Court's consideration concerning the oral ruling at the March 24, 2016 hearing. That proposed order attempted to re-write history, and created the false perception that the Court granted Plaintiff's Original Motion to Compel in almost every respect, save for a fictional delayed ruling on his request for attorneys' fees as a discovery sanction. (*See* Dkt. # 44, Exhibit B.) Defendants were forced submit their own proposed order, which tracked the language of the Court's actual ruling at the March 24, 2016 hearing, and that the Court adopted and entered. (*See* Dkt. # 44, Exhibit C; Order on Motions Hearing, Dkt. # 26.)

As Defendants confirmed to the Court multiple times in briefings, Defendants had already produced all records concerning the documented reasons for Plaintiff's termination of employment before the Court's ruling on the Motion to Compel. (*See* Defendants' Combined Response in Opposition to Plaintiff's Motion to Compel Limited Discovery Prior to Consideration of Summary Judgment and Emergency Rule 56(d) Motion (Dkt. No. 44) at 12 (**"Notably, Defendants had already produced all such records."**) (emphasis in original); Defs' Resp. to Original Motion to Compel (Dkt. No.19) at 12-13 ("Defendants have already provided to Plaintiff abundant information and documents outside of the administrative record in response to his various discovery requests, including Plaintiff's personnel file, Plaintiff's personnel records, Plaintiff's compensation records, documents and information regarding the assessment of Plaintiff's performance by his supervisors (including email communications), information about Plaintiff's appearance on a "high potential" list of employees, information regarding ITW's changes to the titles of General Manager and Business Unit Manager positions, documents from the personnel file of Plaintiff's replacement, salary range and job grade information for Plaintiff and his replacement, applicant materials submitted by Plaintiff's replacement, information about the compilation of the administrative record, and information about Mr. Goldman's administration of prior appeals under the Plan.").)

Plaintiff later filed a Motion to Compel Limited Discovery Prior to Consideration of Summary Judgment (Dkt. No. 37) and Emergency Rule 56(d) Motion (Dkt. No. 41) – seeking the same documents the Court had already denied to compel production of in the Original Motion to Compel. The Court denied both of those motions and did not order Defendants to provide any further discovery to Plaintiff. (*See* Dkt. No. 45.) Thus, it is undisputed that Defendants have fully complied with all the Court’s prior discovery orders. The Court can therefore confirm, as directed by the Eleventh Circuit, that “the plan administrator has provided Mr. Boysen with all the discovery previously ordered.” (Dkt. No. 97.)

Further, as required by ERISA, the Plan’s terms include a multi-level claims process, where an eligible employee may file a claim for benefits with the Plan Administrator and appeal adverse claim determinations. (AR 9-10, § V.) This claim process provides for the plan administrator – and only the plan administrator – to review and decide claims and appeals for benefits under the Plan. (AR 9-10, §§ 5.2, 5.3.) The Plan further provides that the “Plan Administrator shall have *the full and exclusive discretionary authority to*: (a) construe and interpret the provisions of the Plan; ... (c) determine all questions arising in the administration, interpretation and application of the Plan; ... (e) designate or employ agents (who may also be employees of the Employers) and delegate to them responsibility for performing

certain duties of the Plan Administrator under the terms of the Plan....” (AR 10-11, § 6.1.)

Given the direction in the Eleventh Circuit’s Opinion that more evidence should be evaluated before issuing a decision on Plaintiff’s claim, the terms of the Plan make it clear that the plan administrator is the appropriate party to undertake that evaluation and make the required determination on Plaintiff’s claim. Failure to have the plan administrator gather and evaluate this evidence in the first instance would ignore and violate the terms of the Plan, which specifically vest only the plan administrator with “full and exclusive discretionary authority” to make such a determination.

Further, federal courts have routinely confirmed that when a court determines that there was a procedural violation of ERISA such that the plan administrator did not engage in a “full and fair review,” the appropriate remedy is to remand the claim to the plan administrator for renewed consideration of the claim. *See, e.g., Brown v. J.B. Hunt Transp. Servs., Inc.*, 586 F.3d 1079, 1087–88 (8th Cir. 2009) (collecting cases). In other words, where “the ‘problem is with the integrity of [the plan’s] decision-making process,’ rather than ‘that [a claimant] was denied benefits to which he was clearly entitled,’ the appropriate remedy generally is a remand to the plan

administrator.”” *Acree v. Hartford Life & Acc. Ins. Co.*, 917 F. Supp. 2d 1296, 1321–22 (M.D. Ga. 2013) (citation omitted).

When, as here, the court did “not decid[e] whether the plan administrator’s decision enjoys factual support in the record; rather, [it] review[ed] whether the plan administrator satisfied his obligation in compiling that record” (Dkt. 97 at 17), “[t]he proper remedy for an incomplete administrative record would be a remand to the plan administrator.” *Slaughter v. Sheet Metal Workers’ Local No. 85 Pension Plan*, No. 1:03-CV-3410-WSD, 2005 WL 8155799, at \*5 (N.D. Ga. Sept. 23, 2005) (citation omitted).

The logic for such a rule is clear and consistent with the requirement that ERISA plans contain internal review procedures that a claimant must exhaust before seeking judicial review of the decision of the plan administrator. *See* 29 U.S.C. §§ 1133, 1135; *see also* 29 C.F.R. §§ 2560.503-1. For the Court to evaluate whether the plan administrator abused his discretion (or even whether his decision was *de novo* correct) when considering a complete record, the Court must have a decision from the plan administrator on that complete record to evaluate. Thus, “as a general rule, remand to the plan fiduciary is the appropriate remedy when the plan administrator has not had an opportunity to consider evidence on an issue.” *Melech v. Life Ins. Co. of N. Am.*, No. CIV.A. 10-00573-KD-M, 2015 WL 4744356, at \*1-2

(S.D. Ala. Aug. 11, 2015) (citations omitted) (remanding case to plan administrator after Eleventh Circuit reversed grant of summary judgment to Defendant, finding that the administrative record relied on by the plan administrator was deficient and plaintiff had been deprived of an opportunity for a full and fair review).

Given that Defendants fully complied with this Court's prior discovery orders, and the Plan grants the plan administrator exclusive authority to review and decide claims for benefits, it is appropriate to amend the Order to reflect that Defendant complied with all discovery orders, and Plaintiff's claim is remanded to the plan administrator for further processing.

## V. CONCLUSION

For all the reasons discussed above, Defendants respectfully move for the Court's Order (Dkt. No. 100) to be vacated, or, in the alternative, amended and clarified to reflect a finding that Defendant has complied with all of the Court's prior discovery orders and Plaintiff's claim is remanded to the plan administrator.

Respectfully submitted this 18th day of July, 2019.

/s/ Wesley E. Stockard  
Wesley E. Stockard  
Georgia Bar #159090  
LITTLER MENDELSON  
3344 Peachtree Road, NE, Suite 1500  
Atlanta, Georgia 30326



Telephone (404) 233-0330

Facsimile (404) 233-2361

COUNSEL FOR DEFENDANTS

**FONT CERTIFICATION**

The undersigned hereby certifies that this pleading complies with the font requirements of LR 5.1C because the document has been prepared in Times New Roman, 14 point.

/s/ Wesley E. Stockard  
Wesley E. Stockard  
Georgia Bar #159090

Attorney for Defendants

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

DAVID L. BOYSEN,

Plaintiff,

v.

ILLINOIS TOOL WORKS INC.  
SEPARATION PAY PLAN, and  
ILLINOIS TOOL WORKS, INC.

Defendants.

CIVIL ACTION NO.

1:15-cv-01900-TWT

**CERTIFICATE OF SERVICE**

I hereby certify on this 18th day of July, 2019 I electronically filed the foregoing **DEFENDANTS' MOTION TO VACATE COURT'S ORDER OR, IN THE ALTERNATIVE, MOTION FOR CLARIFICATION OF COURT'S ORDER** using the Court's ECF system, which will automatically generate notice to:

R. Lawrence Ashe, Jr.  
Paul R. Barsness  
Parker, Hudson, Rainer & Dobbs, LLP  
303 Peachtree Street, N.E.  
Suite 3600  
Atlanta, Georgia 30308

/s/ Wesley E. Stockard  
Wesley E. Stockard

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day filed this **REPLY MEMORANDUM IN SUPPORT OF APPELLANT'S APPLICATION FOR ATTORNEYS' FEES** using the Court's CM/ECF system, which automatically sends notification to the parties and counsel of record. A copy of the foregoing **REPLY MEMORANDUM IN SUPPORT OF APPELLANT'S APPLICATION FOR ATTORNEYS' FEES** was also sent via U.S. Mail to Appellee's counsel as follows:

Wesley E. Stockard  
Littler Mendelson, P.C.  
3344 Peachtree Rd., N.E.  
Suite 1500  
Atlanta, Georgia 30326

Dated: August 12, 2019

By: /s/ R. Lawrence Ashe, Jr.  
R. Lawrence Ashe, Jr.